Ombudsman
Fairness for all in British Columbia

1990 Annual Report

To the Legislative Assembly

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May 1991

The Honourable Stephen Rogers
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, B.C.
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Dear Mr. Speaker:

It is my pleasure to present the 1990 Report to the Legislative Assembly in accordance with section 30(1) of the Ombudsman Act. This Annual Report covers the period January 1 to December 31, 1990.

As an officer of the Legislative Assembly, I would be pleased to appear and report further on these matters, at the request of the Members.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudsman

Table of Contents

PART I: INTRODUCTION

Current Issues

Service quality 11
Administrative fairness checklist 15
Organizational structures in bureaucracies 18
Contract management 21
"Person to Person" video 21
Access to information and privacy o f personal information ... 22
Children and youth issues 26
Natural resource management issues 32

Public Report Updates

No. 11 38
No. 15 38
No. 21 39
No. 22 40

PART II: CASE SUMMARIES

Ministries

Advanced Education, Training and Technology 51
Agriculture and Fisheries 53
Attorney General 58
Crown Lands 67
Education 77
Energy, Mines and Petroleum Resources 79
Environment 82
Finance and Corporate Relations 90
Forests 96
Health 104
Labour and Consumer Services 110
Municipal Affairs, Recreation and Culture 115
Parks 121
Provincial Secretary 122
Regional and Economic Development 123
Social Services and Housing 124
Solicitor General 153
Transportation and Highways 170

Other Authorities
Agricultural Land Commission 179
B. C. Buildings Corporation 180
B. C. Council of Human Rights 182
B. C. Ferry Corporation 184
B. C. Housing Management Commission 185
B. C. Hydro and Power Authority 186
Industrial Relations Council 189
Insurance Corporation of British Columbia 191
B.C. Lottery Corporation 196
B.C. Marketing Boards 197
B.C. Racing Commission 198
B.C. Securities Commission 199
B.C. Steamship Company 200
Superannuation Commission 201
B.C. Transit Authority 204
Workers' Compensation Board 205
Criminal Injury Section, WCB 213
Non-jurisdictional Complaints 215

PART III: STATISTICS

Tables

1. Profile of Complainants, Jurisdictional Matters 228
2. Geographical Origin of Complaints 229
3. Disposition of Jurisdictional Complaints 230
4. Complaints against Unproclaimed Authorities 232
5. Non-jurisdictional Complaints 233
6. Reasons for Declining or Discontinuing Investigations 233
7. Level of Impact of Resolved Complaints 234
8. Ombudsman Reports on Investigations, 1981-90 234
9. Complaints/Inquiries Closed - Selected Authorities, 1982-90 .. 234
10. Jurisdictional and Non-jurisdictional Complaints, 1979-90 235
11. Disposition of Jurisdictional Complaints (Numbers), 1979-90 .. 235
12. Disposition of Jurisdictional Complaints (Percentages), 1979-90 236
13. Complaints/Inquiries Received and Closed, 1979-90 236

Ombudsman Office Staff 237
Ombudsman Act 239

Highlights of the 1990 Annual Report

Statistics

- ☐ More complaints were received in 1990 than in any previous year since the Ombudsman office was set up. The 14,580 complaints received in 1990 represented a 12.7% increase from the previous year's total and an increase of one-third over the 1986 total. The number of full-time staff at the Office of the Ombudsman has remained unchanged since 1986.
- ☐ Of the 3,446 investigations completed in 1990, 62.6% of the complaints were resolved, 37.2% were not substantiated, and 0.2% were not resolved because an authority either refused to or was unable to comply with our recommendation for a resolution. These and other terms used to describe the manner in which files are closed are defined on page 50.
- ☐ Just over 45% of the complaints brought to our attention were non-jurisdictional. Landlord-tenant disputes were the most frequently mentioned problem in non-jurisdictional complaints. Categories of non-jurisdictional complaints are described in Table 4 (page 232).

Public reports

- ☐ Investigation of events leading to a fire at a residential treatment centre for youths led to major concerns about coordination among several ministries and agencies providing services to children and youth. The result was a major public report, No. 22, that recommended significant changes in the organization of these services as well as legislative amendments. (Page 40)
- ☐ Shortly after release of Public Report No. 22, the Minister of Social Services and Housing asked our office to suggest amendments to the Family and Child Service Act, in conjunction with a ministry review of the legislation. Our recommendations were set out in Public Report No. 24. (Page 26)
- ☐ The mayor of a northern municipality complained when jobs in the community were threatened by the award of a major forest licence to companies from another municipality, in spite of a contrary recommendation by the Deputy Chief Forester. Our investigation found that there had been inappropriate interference by a cabinet minister with the legislated responsibility of the Chief Forester. (Page 39)
- ☐ Two years after the release of Public Report No. 15 on aquaculture and the administration of coastal resources, we note that although various resource ministries are building inventories and setting priorities, no apparent steps have been taken to put in place the legislative and policy framework required to construct a coherent integrated resource management process, as recommended by the report. (Page 38)
- ☐ Legislation governing access to government information and privacy of personal information has been in place for several years at the federal level and in some provinces, but has not yet been introduced in B.C. Ombudsman-initiated Public Report No. 26, released in March 1991, emphasizes the advantages of an open approach by public authorities handling requests for non-personal information, and sets out guidelines to help public officials determine when it is appropriate to withhold or release information. (Page 22)
- ☐ A dependent adult in a day program was punished by having soap rubbed across her mouth. The investigation that followed the incident led to several concerns being raised about the delivery of services to developmentally challenged persons. Consultation between our office and the ministries providing these services is continuing.

The protection of dependent adults was the subject of Public Report No. 25, released in March 1991. (Page 142)

Case summaries

- A complaint was made against a complainant after a highway diversion posed a threat to an ancient native burial site. When natives from Washington came to claim the site as their own, the owner of adjacent land complained that the Cultural Heritage Branch was neglecting its duty to protect the site from the natives. Unaware that the man had contacted our office, his neighbour complained about the first complainant's illegal gravel pit. (Page 115)
- A man's application for a driver's licence was refused after he lost his identification papers. His cause was not helped by the fact that Motor Vehicle Branch records showed that a debt to ICBC was owed by a driver with the same name and same birthdate as those of the complainant. (Page 167)
- Ignorance of the law was no excuse for a shop-owner who charged sales tax on T-shirts but not on the imprinted patterns she designed for them. The Ministry of Finance came after her for back taxes. We concluded the Ministry was right to do so. (Page 90)
- A driver received a letter from ICBC billing him for damages to a vehicle. He was furious because he hadn't been given a chance to refute the assumption that the accident was his fault. He refused to pay and demanded an apology. (Page 194)
- The father of a violent youth claimed that assistance from government ministries was crisis-oriented when co-ordinated long-term planning was needed, and he felt excluded from the planning process. Our contacts with several government agencies led to a solution that the father considered to be satisfactory. (Page 137)
- A young man who broke a city bylaw by skateboarding downtown complained that the police confiscated his $220 board and then lost it. After a phone call by our office to city police, the skateboard was discovered and returned to the complainant. (Page 222)
- A man who was subpoenaed to appear as a witness in a court case thought it was odd that the judge and the lawyers were paid for their time, yet there was no compensation for his lost wages. Current law makes no provision for payment to witnesses, so he was out of luck. (Page 61)
- Offers for a piece of land needed for a natural gas pipeline were all over the board when a farming family found itself dealing with a purchaser appointed by the Ministry of Energy, Mines and Petroleum Resources. Mediation by our office resulted in a fair settlement. (Page 80)
- A man whose family was without electricity and food was denied hardship assistance because of internal confusion about Ministry of Social Services and Housing policy. The policy was clarified and hardship assistance provided. (Page 145)
- A worker's career as a machinist came to an end after he developed tendonitis. With the aid of a cash rehabilitation settlement from the Workers' Compensation Board, he hoped to set up a computer business. His plans went awry when the settlement was greatly delayed. We acted as a go-between to help him deal with the problems holding up the payment. (Page 208)
- An inmate whose gold ring was lost during a move between correctional centres demanded compensation. Every time he thought about the ring, its value rose a bit. He finally settled for an amount somewhat less than the enormous price he placed on the ring. (Page 156)
- A professional association claimed that a requirement that public servants be Canadian citizens was unfair. A recommendation by our office became

unnecessary when the Supreme Court of Canada ruled that the legislative provision in question was in breach of the Canadian Charter of Rights and Freedoms. (Page 92)

- A lengthy investigation into the grievances of ranchers whose crops were being destroyed by elk came to a conclusion after the provincial government set up a committee to attempt to resolve the conflict. (Page 82)
- Other animals of various species figured prominently in our investigations during 1990. These included a vanishing whale (page 67), a bull with a grudge against fences (page 68), bees attacked by mites (page 53), odiferous chickens (page 56), endangered turtles (page 170) and, last but not least, Jerry the Moose (page 120).
- A young woman who returned to the country of her birth to work for a couple of years encountered a bureaucratic nightmare when she tried to return to Canada, as a result of a mixup in the federal Department of Manpower and Immigration over her citizenship application. Her complaint and several other grievances against federal departments illustrate an urgent need for a federal Ombudsman. These cases are described at pages 215 to 219.

Other initiatives

- We acted as consultants to Service Quality B.C., a secretariat set up by provincial deputy ministers to assess the quality of service provided by the B.C. public service and to identify ways to improve that quality. A comprehensive administrative fairness checklist prepared by our office may serve as a model against which public authorities can assess the quality of their service to the public. (Pages 14-15)
- From time to time, we receive complaints from disabled people about a lack of sensitivity on the part of public servants. For example, a wheelchair-bound woman complained that she was treated like a child at a motor vehicle office, and a man complained that a liquor store employee refused to serve him because his disability was mistaken for inebriation. We suggested to the Assistant Deputy Ministers Steering Committee on Disabilities that a video be prepared to provide information to public servants serving people with disabilities. We were actively involved in the production of the "Person to Person" video that resulted from our discussions. (Page 21)
- After receiving large numbers of complaints from inmates, we initiated a review of grievance procedures in correctional centres. (Page 155)
- Together with the University of Victoria Institute for Dispute Resolution, we hosted a two-day symposium on consensual resolution of natural resource use conflicts. The symposium brought together leading North American experts in natural resources and environmental conflict resolution with representatives from aboriginal groups, environmental organizations, key government agencies, business, and organized labour. (Page 32)

Part I
Introduction

Current Issues

> There are only two kinds of madness one should guard against. One is the belief that we can do everything. The other is the belief that we can do nothing.
>
> — André Brink, A Dry White Season

Change is rarely an instant event, even when it catches us by surprise. More often, the force of change builds over time, until its logic becomes irresistible and what seemed distant and complex is suddenly obvious. It is not based on an individual doing everything or nothing, but rather on increasing numbers each doing something about issues of importance to society.

The Ombudsman's office deals with thousands of individual complaints each year. Many are isolated incidents which are resolved without having an impact beyond the individuals directly involved. However, others combine to demonstrate an underlying problem in the administrative system which, if not changed, can cause recurring unfairness. Over the past few years, this office has published a number of reports recommending systemic change to the administrative practices of individual public agencies and also reports dealing with issues that have general relevance to all agencies of government. This section addresses a number of related cross-ministry fairness issues, including the quality of public service, access to information and privacy, organizational structures, consensual dispute resolution and the integration of services. Also, an administrative fairness check-list is included to illustrate how the Ombudsman's office approaches issues of fair treatment to the public, and to suggest a model which government agencies may use to review their practices and policies. This office believes that major change is either under way or likely to occur shortly in all of these areas of public administration.

Service Quality

Service quality is not a tactical option for the public sector – it is a strategic imperative. As quality has become the focus of competition in the private sector, the public has come to expect it in public services as well. The current general disaffection for public officials is directly linked to the feeling that we are paying dearly through our taxes for government and we expect but feel we are not getting service quality in return. This has become a major issue for all governments and one to which elected and non-elected officials must and will respond.

Public service quality and administrative fairness

The 1989 Annual Report of the Ombudsman identified quality in public services as an integral element of the duty of administrative fairness owed by government to the public. The report set out the idea that it is the primary responsibility of each public servant to be sensitive to the quality of the service provided to each member of the public affected by an administrative decision or action of government.

This sensitivity must be demonstrated at every stage of the public service's interaction with every citizen. For example, telephone and office reception must clearly demonstrate the high regard in which the public is held and the sincere desire to provide fair and effective service. Every effort must be made to respond with promptness and courtesy and to ensure that the needs or concerns of the citizen are fully understood by the government office and that the required service is either provided in the most efficient way or, if this is impossible, that the citizen is advised of the reasons and properly referred to the appropriate agency that can help. Where a commitment to act is made, the citizen must be given a realistic expectation of the extent of the service and the time required to perform it. Where there are ongoing dealings with an individual, the government agency should manage the service by dealing with it in a timely way and, where delays are inevitable, should keep the individual regularly advised of the progress up to date, reasons for delay and revised estimates for time of completion. When the matter is completed, full and complete reasons for the final decision or action should be provided so that, particularly where a decision goes against the citizen's wishes, there is the opportunity to understand fully why what has happened has happened.

The 1989 Annual Report noted that the Ministry of Government Management Services had started a program to promote the idea of service excellence in its employees. Since then, this Ministry has continued with its program of staff training; and, as well, a Deputy Ministers' committee has established "Service Quality B.C." under the direction of the Comptroller General, to develop a government-wide program over the next year.

Although an emphasis on service quality is evident in the B.C. public service, experience in the private sector indicates that it cannot be achieved and sustained without continuing commitment from the highest levels of management and without recognition that the process itself can take a great deal of time. While the time spent on maintaining a high standard of service may be seen as costly, it is a small expense compared to the time that must be spent responding to citizens who experience poor quality service or who are at risk of losing faith in government. A number of the key elements of a program to encourage quality service are discussed below, and the current provincial government initiative is described.

Performing to expectation

Quality service is related not to the type of service an organization delivers, but rather to the manner in which it is delivered. Quality occurs when an organization's performance matches or exceeds the expectations held by its clients. Three things should be noted about quality service: there is no particular price level to quality; the organization controls the expectations; and the client assesses the performance.

First, quality service is not something that is necessarily expensive. A hamburger joint with clean tables, decent food and cheerful employees offers better service than an elegant restaurant with overpriced meals and unfriendly waiters. The point is that the assessment of quality service is related to our expectations and not to the price. If the service is a fair response to what we expect for our money, then we will recognize this as quality. Quality service may be offered by any organization, at any price, and it succeeds when it delivers on its promises.

Second, the organization influences the expectations of its clients. Expectations can be both general and specific. General expectations are the bare minimum expected by the public for the type of service being provided. Beyond these, the client's specific expectations can be shaped by advertising, political promises, or statements of principle. Specific expectations must not only be created but also managed. To create an expectation is an empty gesture without a promise to fulfil it. Before creating an expectation, an organization must assure itself of its ability to fulfil the promise it implies.

Third, the client judges the performance. He or she does so by comparing the result with what was expected. Improvements in service quality in the private sector over the past decade have raised expectations for service in the public sector.

Leadership

Service quality requires leadership. If senior management does not clearly show that it both demands excellence and supports it with adequate resources and motivation, it will not become a routine characteristic of an organization. But words and money are not enough. Senior management must state the principles of service quality and develop a framework that allows them to be realized. In government, management must carefully analyze and articulate its statutory responsibilities, which are the general expectations of the public; ensure that policies and procedures are in place to meet those responsibilities; ensure that staff are aware of their duties and adequately trained, motivated and provided with the resources to perform them; and monitor performance to make sure that it meets the expectations.

Employee support

Organizations that do not value their employees cannot expect them to provide high quality service. As more functions are performed by machines or computers, the number of human contacts between an organization and the public is likely to decrease. This makes these contacts more important, not less so, and the employee making contact becomes fundamentally important to the quality of the service and the reputation of the organization. This is especially true of the front line employees who, having the most direct contact with the public, have the greatest influence on the public perception of the quality of government service.

Employees who believe that their work is important and is respected are likely to deliver high quality service. Management must not simply tolerate the extra effort and resources required to achieve quality, it must insist on them. This requires clear communication in an organization. Employees need to know what is expected of them and must be provided with the training, resources and motivation in order to do it. As well, they need to be given the greatest possible authority to carry out their responsibilities in a way that they know will be supported by management.

The emphasis on quality public service in Canada is not new. The Quality of Working Life project, introduced in the federal public service in 1975, was founded on the belief that

> if employees are given more opportunity to participate in technology, tasks, work organization and decision-making with the support of unions and management, the result will be improved economic effectiveness and improved work life.

Although the focus of the project had more to do with the quality of an employee's job experience than with the quality of service to members of the public, these goals are clearly linked. In his 1989 report, the Auditor General of Canada included a section on public service values. He noted that the most important values stressed by those areas of the public service which were providing excellent service were openness, trust and integrity. He stated:

> Management and staff rely on each other. They also confide in each other, they listen to each other's viewpoints. They share information. They follow through on promises. Their actions match their words.

From the perspective of the employee, it was noted that, most importantly, people wished to do a decent job, be appreciated and be proud of their organization. These are not surprising desires for employees in either the public or the private sector. The question confronting public servants and their managers is how to create a work environment where these characteristics are not only desired but also realized.

Statutory responsibility

As mentioned, expectations are either general or specific. In the public sector, the general expectations are set out in statutes. Unlike the private sector, which is able to choose the nature of its business and then to define it, the public sector has had its business chosen for it by the Legislature. In the private sector, management is motivated by competition to create and ensure fulfilment of public expectations; in government, where the creation of general expectations is not the prerogative of management, motivation must arise from an active desire to provide quality service in the public interest. General expectations in the private sector become rights in the public sector.

Statutes set out responsibilities that must be met, but leave unstated general responsibilities that are required for effective fulfilment of legislative intentions. For example, the *Workers' Compensation Act* provides for a right of appeal for someone who disagrees with a decision of the Workers' Compensation Board. Although it is a necessary implication of the statute that people must know about their appeal rights, there is no statutory duty to tell them so directly. As a matter of administrative fairness, it is the responsibility of a public administrator to ensure as far as possible that people are aware of these implied rights, which then become specific expectations by which the quality of a public service can be measured.

Service Quality B.C.

In August 1990, the provincial Deputy Ministers established a Secretariat named Service Quality B.C., chaired by the Comptroller General, to assess the quality of service provided by the B.C. public service and to identify ways to improve that quality. It was to report back in approximately one year. The secretariat sees its work as having three stages. First, it has toured the province listening to the concerns of public servants. Second, it is consulting with all Ministries to encourage excellence in public service. Third, it will ensure that training and other resources are available to provide public servants the necessary tools to achieve excellent public service.

The secretariat has published a business plan and provided a copy to each provincial public employee. The plan sets the following priorities for government:

1. Improve public access to government service,
2. Lead with Ministry initiatives,
3. Provide training necessary to improve service to the public,
4. Increase delegation of authority,
5. Recognize the value of customer service skills,
6. Make service quality matter,
7. Ensure support of personnel management policies,
8. Build responsive central agencies,
9. Monitor progress.

This initiative has recognized that for service excellence to occur, there must be support from the highest levels of government. Each Ministry and Crown corporation has appointed a senior management co-ordinator to be responsible for the development of service excellence in his or her organization. These co-ordinators meet together on a regular basis to share ideas, develop strategies and assess the development of their respective programs.

The Ombudsman's office acts as a consultant to their process. The approximately 14,500 complaints per year made to the Ombudsman provide an accurate reflection of the public perception of the quality of public services. This office also is able to advise different agencies of government on which service quality initiatives in different parts of the public service are working well and could be applied elsewhere.

It is important to note that a public servant has loyalties that can sometimes be seen as competing. Traditionally, loyalty is seen as upward through the bureaucracy to the Minister, who is responsible to the public through the Legislature. However, a public servant's loyalty can also be seen as being owed directly to the members of the public who come to him or her for service. Loyalty through the political process can only effectively address the broad policy objectives of government. Loyalty directly to individual members of the public is necessary to ensure administrative fairness, and it is an essential ingredient of any program of service quality.

The Ombudsman's office is encouraged by the current initiatives of senior public administrators in B.C. towards service excellence. It seems to be recognized that the process requires energetic and continuing commitment. It is not a quick fix for a disillusioned public, nor is it a political gimmick. It is a permanent means of ensuring that the administration of public business demonstrates a proper appreciation of the public's rights and expectations in a democratic society.

Administrative Fairness Checklist

The primary role of an Ombudsman's office is to receive and investigate complaints of administrative unfairness made by individual members of the public against government. Where unfairness is found, a recommendation is made to the appropriate government agency to rectify the situation. The types of unfairness which the office reviews and the recommendations it can make are set out in section 22 of the *Ombudsman Act*, which is included at the end of this report.

In addition to reacting to individual complaints, the Ombudsman's office has the responsibility to advise government on systemic causes of unfairness and to recommend changes to practices, policies and legislation which contribute to recurring unfairness. This systemic approach has been described in previous Annual Reports and has led to numerous Public Reports over the last several years dealing with many aspects of the administration of government policy, applying to individual ministries, agencies and Crown corporations as well as to the public service generally across all agencies of government.

In an attempt to assist public authorities to limit individual cases of unfairness and to enhance the notion of quality public service, the Ombudsman's office has developed an Administrative Fairness Checklist. This can serve as a framework for the systematic, comprehensive review of potential sources of complaint against a public agency which can then be tailored to fit the specific responsibilities of the agency. The checklist can be used by the Ombudsman's office in various ways: to audit the administrative practices of a particular agency; to compare the approaches of different agencies across government; as an outline for a systemic report recommending changes to the administrative practices of a public agency; and to design training programs for public employees working in any government agency. A summarized version of the Administrative Fairness Checklist, which can be adapted to suit the responsibilities of any public agency, is as follows:

ADMINISTRATIVE FAIRNESS CHECKLIST

Information/Communication

1. *Public information*
   Is the public information (booklets, pamphlets, brochures, statute, regulation, video tapes, etc.) about all the agency's programs sufficiently detailed, understandable and readily available for those affected?
2. *Information of public interest*
   Does the agency have an access to information policy with respect to information of public interest which is not specifically protected by a duty of confidentiality? Are there reasonable procedures for responding promptly to public requests for such information?
3. *Initial contact information*
   During the initial contact, do individuals receive an adequate explanation of the role of the agency representative and the procedures to be followed as well as all relevant entitlements, benefits, eligibility criteria and other options, conditions and obligations?
4. *Forms*
   Are all applications, releases, consents and other forms required by the agency written in plain language? Is the purpose of each form clear? Are individuals provided immediately with copies of all forms and statements they have signed?
5. *Letters*
   Are all form and personal letters from agency representatives written in plain language without unnecessary technical, legal or bureaucratic jargon? Is the purpose of each letter, and its relationship to other letters and conversations, clear? Where reference is made to a statute, is it described in an under-

standable way? If further action is to occur, are the timing and the responsibility for taking the next step explained? Is the writer identified?

6. *Courtesy*
   Is all communication with citizens conducted in a courteous and respectful manner?

Physical Facilities/Accessibility of Service

7. *Telephone access*
   Does the agency provide adequate telephone access (including access by toll-free numbers or collect long-distance calls) to meet the public's need for information about programs and case processing? Is the agency's telephone number printed on its stationery? Are telephone volume and message return time monitored to ensure that minimum standards of service delivery are met? Are ringing telephones always answered? Is there an answering machine outside office hours?
8. *Personal access*
   Are site inspections/visits conducted when appropriate and necessary for the proper completion of the administrative procedure involved? Are community service facilities distributed throughout the province and within regions to ensure optimum accessibility by the population to be served?
9. *Physical facilities*
   Do the current or planned physical facilities incorporate acceptable standards for accessibility by disabled persons, the health and safety of staff and visitors, privacy of communication and any other special need related to the purpose and function of the facility?

Investigation/Decision Procedures

10. *Notice of proceedings*
    Are all parties who may be adversely affected by a decision or action of the agency (including an appeal or review of a decision) given adequate and timely notice of the investigation/hearing process, the nature of the resulting decision or action and its possible implications?
11. *Investigative responsibilities*
    Are the agency's powers and responsibilities to conduct direct investigations exercised in a consistent, thorough and fair manner having regard to the dignity and privacy of individuals affected? Are these individuals properly informed of such procedures at the appropriate times?
12. *Confidentiality*
    Do the agency's statutory/regulatory confidentiality provisions afford sufficient protection for the individuals affected while supporting the efficient delivery of services? Are the intentions of these provisions reflected in the agency's policies, procedures and practices? Are clients advised of these provisions and the reasons for them? Are the proper informed consents obtained when confidential information must be obtained from or shared with other agencies or individuals?
13. *Opportunity to be heard / to respond*
    Are parties affected by a decision given an adequate opportunity to present evidence in support of their positions, including the opportunity to examine and comment on all of the evidence from other sources which may be considered in arriving at the decision?
14. *Relevant considerations*
    Are decisions always based on all of the relevant information, excluding all irrelevant considerations?
15. *Impartiality*
    Are there adequate procedures to deal with situations where individual decision-makers are subject to conflicting interests which may affect, or appear to affect, the making of an impartial decision? Where certain decisions cannot be impartial in the judicial sense because of the agency's mandate, positions or interests to be protected, are these factors explained to the parties at the outset?

16. *Timeliness*
    Are decisions and actions made promptly? If not, are the parties given adequate explanations as to why delays may be expected?
17. *Reasons*
    Are the affected parties provided with adequate and appropriate reasons for the agency's decisions and actions? Are written reasons available on request?

Exercise of Power/Legal Framework

18. *Legal authority*
    Are all the decisions and actions of the agency clearly authorized by, and consistent with, the governing statute and regulation? Are powers exercised for the intended purpose?
19. *Legal responsibilities*
    Does the agency meet all of its legal obligations to act, issue benefits, inform, collect, enforce, etc.? Is it provided with adequate resources to do so efficiently?
20. *Exercise of discretion*
    Is the delegation of discretionary and non-discretionary authority in the empowering legislation and regulations appropriate to the types of cases to be decided? Is the exercise of discretion properly structured by administrative policy and objective standards to ensure consistency while avoiding inappropriate inflexibility?
21. *Adequacy of powers*
    Are the existing statutory and regulatory powers, including the formal policies and procedures developed from them, sufficient to achieve the agency's mandate effectively and fairly?
22. *Relationship to other laws*
    Are the agency's legislation, regulation and policies consistent with the letter and intent of other legislation, federal and provincial, to which they are subject, including the Canadian Charter of Rights and Freedoms? Are they well integrated with complementary provisions of other statutes from the perspective of the individuals affected?

Appeal, Review and Complaint Procedures

23. *Availability and adequacy of remedies*
    Is there an appropriate and accessible (affordable, simple and prompt) appeal or review procedure for each decision and action that will directly affect an individual's interests?
24. *Appeal information*
    Are individuals fully informed at the time decisions are made, or actions taken, of all available internal and external avenues of appeal, review and complaint?
25. *Appeal time limits*
    Are the time limits for initiating an appeal or review reasonable? When individuals are advised of these time limits, is it clear which limits are imposed by law and which limits are imposed by administrative discretion or policy?
26. *Complaint procedures*
    Are there clearly defined complaint procedures at all levels in the organization for considering and responding to individuals' concerns about policy, procedural and service quality issues? Are there procedures for actively inviting from the public suggestions for improvements in service?

Organizational/Management Issues

27. *Labels for roles / procedures*
    Do the labels assigned to roles, procedures and departments simply and clearly describe the function performed? Are labels and key procedural terms used consistently by representatives of the agency, and can their meanings be easily conveyed to the public?
28. *Definition of roles / procedures*
    Are there any procedures or roles which could be combined, separated or otherwise reorganized to achieve a higher quality of service/fairness for the public given the available resources?

29. *Delegation of authority*
    Is the delegation of line authority appropriate, considering the level of employee expertise and the needs and expectations of the public?
30. *Personnel selection / evaluation*
    Do criteria for the selection, deployment and evaluation of personnel take into account the skills, attitudes, and aptitudes necessary to deal sensitively, fairly and effectively with the public?
31. *Training and supervision*
    Are personnel training programs and supervision adequate to meet performance expectations of management and the public? Are all front-line staff properly instructed regarding the importance of treating all individuals with respect and courtesy?
32. *Inter-agency / professional coordination*
    Would any policy or procedural adjustment in the agency's relationship with any other provincial government agency, non-governmental agency or professional group improve service quality and fairness to the public? Is the agency blamed for problems originating with other agencies?

Program Review and Planning

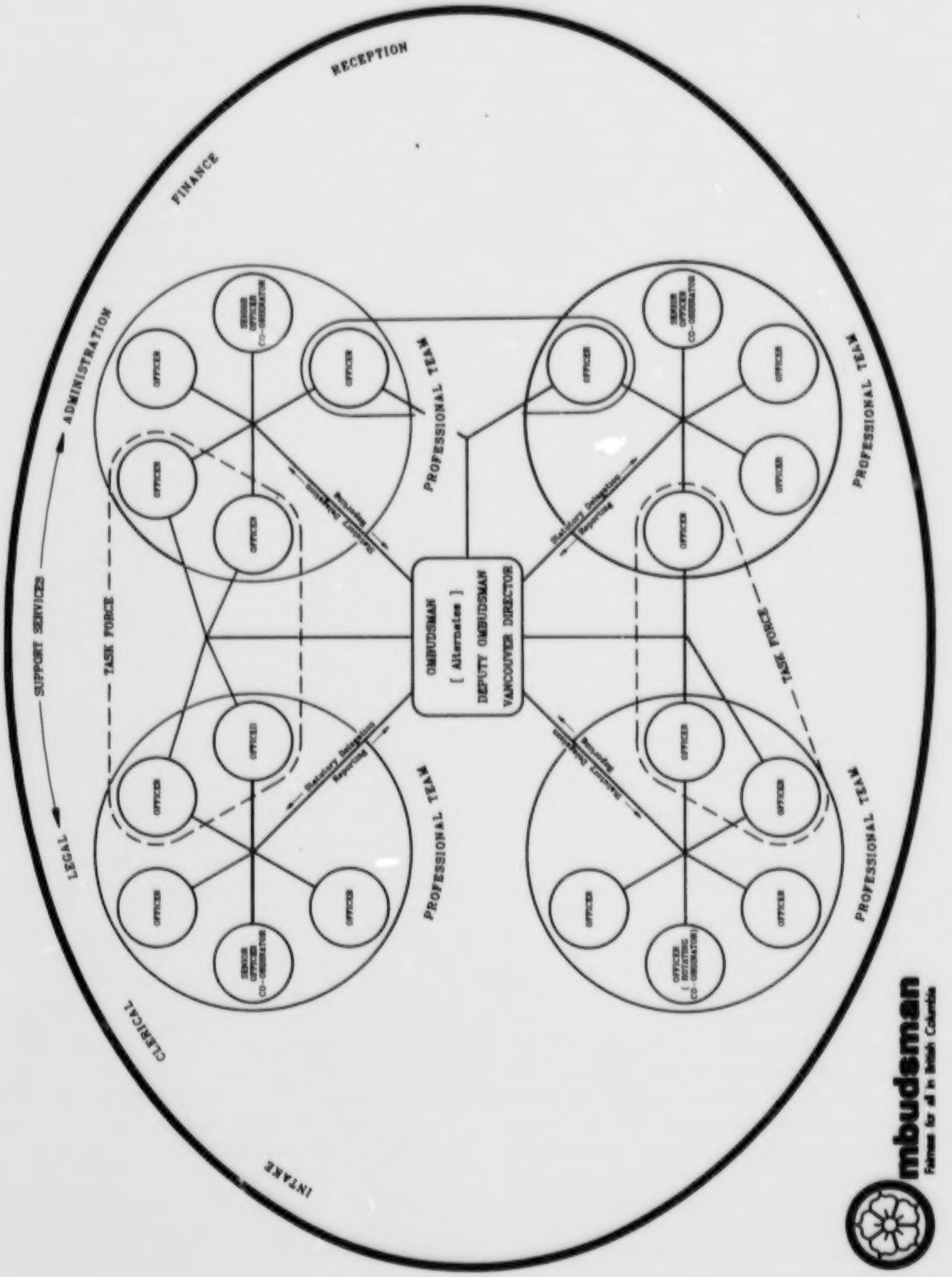
33. *Outside involvement in program planning*
    Are there appropriate mechanisms for the meaningful participation of affected individuals and groups in the planning of program initiatives and modifications?
34. *Appeal / complaint data use in planning*
    Are there effective procedures for ensuring that appeal, review and complaint data are incorporated in the planning and review of the agency's programs and policies?

Organizational Structures in Bureaucracies

Public service quality cannot be achieved without a skilled and properly supported staff who are also committed to the concept. The Auditor General of Canada's comments on public service attitudes demonstrate a clear link between organizational support and excellent performance, and the importance of fostering positive attitudes among public employees and motivating them to think of their work as a rewarding experience.

The Ombudsman's office provides a front-line, high volume public service, and it must be especially sensitive to high quality and fair treatment of the public. The office is aware of the potential for apparent confusion between loyalties to the public and to management in a bureaucratic hierarchy, and therefore it has redesigned its organizational structure over the past few years. While it is appreciated that a small organization like the Ombudsman's office can perhaps more easily operate with minimal hierarchy, its work is diverse and highly technical, so that the principles and structure that have been developed may be relevant to larger public service organizations. Industrial and service enterprises in the private sector (such as 3M Corporation and Scandinavian Airlines) have demonstrated the direct link between quality and innovative organizational structure, despite their large size and complex international operations.

The accompanying diagram shows the revised structure of the Ombudsman's office. Previously, the office operated with a traditional hierarchy, with formal reporting for professional staff from the investigating Ombudsman officer through a senior Ombudsman officer, director of investigations, executive director and finally to the Ombudsman. Clerical staff were seen as subordinate to professional staff. This arrangement had a number of negative consequences for staff morale, effectiveness and quality of public service. It did not properly reflect the fact that professional Ombudsman officers exercise statutory investigative authority delegated directly from the Ombudsman under the *Ombudsman Act*, and therefore have a direct reporting relationship to that position. Where direction and reporting are


OMBUDSMAN
[Alternates]
DEPUTY OMBUDSMAN
VANCOUVER DIRECTOR
PROFESSIONAL TEAM
PROFESSIONAL TEAM
PROFESSIONAL TEAM
PROFESSIONAL TEAM
SENIOR OFFICER CO-ORDINATOR
SENIOR OFFICER CO-ORDINATOR
SENIOR OFFICER CO-ORDINATOR
OFFICER (ROTATING CO-ORDINATOR)
OFFICER
Statutory Delegation
Reporting
TASK FORCE
TASK FORCE
SUPPORT SERVICES
ADMINISTRATION
LEGAL
FINANCE
RECEPTION
CLERICAL
INTAKE

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screened through various supervisory levels, the focus of the officer's work can become blurred. For the Ombudsman, who must take personal responsibility for the decisions and actions of the office, there must be an unfiltered interaction with the investigations and analyses on a day-to-day basis. This requires the freedom of staff both to take professional responsibility for their work and to have direct access to the Ombudsman to discuss the application of office policy. Also, the previous structure incorrectly suggested that the clerical staff were somehow subordinate to the professional staff, and not directly involved in the office's service to the public.

The new organizational chart displays a relationship that, by dismantling hierarchy, encourages quality service. The office's jurisdiction is divided among several professional teams, split evenly between the Ombudsman's two offices in Vancouver and Victoria. There is no head office or branch office, but each team has functional responsibility throughout the province for cases within its described jurisdiction. The Vancouver office deals with Crown corporations, boards, commissions and agencies within one team; and with correctional, mental health and long-term care institutions (together with related community based services) within another team. A standing income assistance team, which handles large volumes of complaints, is made up of part-time members from the two larger teams. The Victoria office deals with the provincial ministries through professional teams dealing respectively with social service ministries, natural resource ministries and cross-ministry children and youth issues.

Where complex investigations or systemic reports require special expertise from different teams, a task force is created for that purpose. The Principal Group Investigation (Public Report No. 19) was an example of this approach, bringing together Ombudsman officers with particular legal, accounting and investigative skills from different teams in both offices for the task.

The reporting relationship of all professional staff is directly to the Ombudsman, and not through any supervisory level. In the Ombudsman's absence, reports are made to the office directors, who are the Deputy Ombudsman in Victoria and the General Counsel in Vancouver. While the organizational chart shows a jog in the line between any officer and the Ombudsman (or alternative) which demonstrates the teamwork approach to different types of cases, there is no intervening individual in this relationship. The classification gap between seniors and Ombudsman officers has been narrowed to reflect the changed role of senior officer from supervisor to team co-ordinator. Where new teams such as the children and youth team or the income assistance team have been created, the co-ordinator's position rotates among the officers on a three-month basis.

The support services staff are not subordinate to the professional staff, but are an integral part of all work done by the office, with each professional staff linking up with support services staff for any particular task. The chart better describes this relationship than a traditional hierarchical structure. Intake and reception services are as important to quality service as anything the office does, as these demonstrate the office's attitude and intention towards the public, and establish the factual and co-operative bases for effective investigation. Administrative, legal and clerical services are drawn on by investigative staff, as necessary.

With increasing on-line communication with authorities and direct word processing by professional staff, clerical staff have opportunities to deal more directly with the public through intake responsibilities, previously involving only professional staff. This mixing of roles binds the staff of the Ombudsman's office more closely in its common purpose of quality service to the public and the Legislature.

Together, these changes in organizational structure have contributed to greater professionalism and productivity in the Ombudsman's office. With less formal structure, they demand greater individual responsibility from each staff member. Direct and ongoing informal communication among staff on all cases ensures a sharing of perspectives and consistency of approach. Team building around complex or confrontational cases provides selective use of the office's specialized resources, while keeping the initial Ombudsman officer centrally involved until the matter is finally resolved, even if this occurs at the cabinet, legislative or Public Report stage.

While organizations of different sizes and functions require specifically adapted organizational structures, this office's experience may be useful to other public agencies in their ongoing attempts to increase public service quality.

Contract Management

In September 1989, a task force was struck jointly by the Ministries of Finance and Corporate Relations and Government Management Services to examine a broad range of issues relating to contract management in government. Representatives from other government ministries were on the task force, and contributions were sought from this office and the office of the Auditor General.

The importance of the issue of contract management to the B.C. government was highlighted in a comment in the task force report, in April 1990, which noted that "according to our best estimate, approximately 4,000 government employees are engaged in managing more than 70,000 contractual arrangements valued at close to $3 billion". In this report, the task force made a number of recommendations, chief of which was for the creation of a contract management council to serve as a forum to deal with contract management issues and problems identified within government.

The Office of the Ombudsman endorses this recommendation, as the council would likely be a useful vehicle for achieving, as the task force suggests, a higher degree of consistency in contracting practices among ministries. It might also serve as a useful forum for ministries to obtain guidance in the avoidance of difficult contractual disputes. This is also consistent with the philosophy of this office, which is that administrative problems should if possible be addressed fairly by the appropriate ministry in the first instance, so as to encourage resolution without the need for Ombudsman intervention.

"Person to Person" Video

In 1990, the Ombudsman's office participated in the production of a video designed to assist public employees in serving persons with disabilities. While there have been numerous initiatives to improve physical accessibility for people with disabilities, the focus of this video was on attitudinal barriers to quality service.

Over the years this office has received a number of complaints resulting from incidents in which public employees' lack of education or knowledge about disabled people has created problems. The nature of these complaints points out that there is a need for more awareness about serving people with disabilities. Fear is identified as a major barrier to successful communication with disabled persons: fear for personal safety, fear of doing the wrong thing, and fear of exposing one's own ignorance.

Our office wanted to help change the attitudes of public service employees rather than simply responding to complaints. We presented the idea of a training video to the Assistant Deputy Ministers Steering Committee on Disabilities, which approved it, and the project started in earnest in early 1990. Negotiations took place with the Knowledge Network, and an advisory committee was struck, made up of senior staff of the major government ministries and representatives of public service unions, disabled advisory groups and other community associations. A general consensus about what the video should contain was reached, and a core working group was named to produce a script outline. Once the outline had been approved by the advisory committee, a contract was signed with a production company in Vancouver to write and produce the video. Once script changes had been completed and agreed to by the advisory committee, cast selection began. Of particular importance was the fact that the actors who portrayed persons with disabilities in the video were themselves disabled. The filming of the video took place in the fall, the editing was completed, and the video was approved for distribution by the committee.

Copies of the production video were shown to the major Crown corporations to determine if they wanted to use the video for their own staff training. A number of the corporations wanted copies and willingly provided additional funding.

The following endorsement was received from Rick Hansen, who will be heading Independence '92, an international conference for persons with disabilities scheduled for Vancouver in 1992:

> This is an excellent video that contributes to the increased awareness of people who have disabilities. The message is delivered in an entertaining and informative manner, and will assist those who provide service in our community to ensure that people who have a disability are always treated as people first.

The British Columbia Premier's Advisory Council for persons with disabilities has also endorsed the video:

> The video portrays in an honest and sensitive way some of the difficulties which people with disabilities and public sector employees experience when interacting with one another. I believe that the video will be an extremely valuable tool in helping people with disabilities, public sector employees and others understand each other's perspectives, and result in significantly improved communication.

The video, "Person to Person", is scheduled for distribution in the spring of 1991, and can be ordered through this office. Its production is an excellent example of how cross-ministry co-ordination can promote service quality.

Access to Information and Privacy of Personal Information

(The following is a summary of Public Report No. 26, *Access to Information and Privacy*, released by this office in March 1991)

The Office of the Ombudsman was established to review the fairness of the administrative actions and decisions of the provincial government and its agencies. It does not take part in the political process of debating government legislative policy. It is independent of government, and reports to the Legislature as a whole, or directly to the public. It investigates complaints from individuals and also initiates its own investigations into individual incidents of suspected unfairness or systemic problems in public administration. It has a preventative responsibility to recommend changes in administrative policy which may cause unfairness in the future, as well as having the role of recommending remedies for individuals who have already been treated unfairly. However, the Ombudsman's office has no power to order change – it can only make recommendations.

The recommendations in Public Report No. 26 are for a fair and effective administrative policy dealing with public access to government information and privacy of personal information. The principles set out are the standard by which the Ombudsman's office considers complaints from the public concerning government practices in this area. Because of the wide scope of government activity, directly through provincial ministries and indirectly through various independent provincial boards, commissions, Crown corporations and private contractors delivering public services, the principles must be adapted to meet the special circumstances of each agency's role.

At its essence, democracy ensures that each individual is treated fairly. This can only be achieved through the meaningful participation of all citizens in the affairs of government. However, the complexities and demands of modern society require the delegation of most governmental actions and decisions, first to elected representatives and then to public administrators.

This steady reduction in direct participation requires that we have effective accountability mechanisms to ensure fairness in the decisions and actions of government. The traditional political and judicial accountability mechanisms are not in themselves sufficient to ensure meaningful participation and individual fairness. Administrative unfairness can occur as the general public policy of government is translated by public servants through the exercise of discretion as they apply it to individual situations. This can sometimes lead to inconsistency and arbitrariness. Further, the nature of large public bureaucracies can often cause the attention of public servants to focus upwards through the hierarchy rather than outwards to the individual members of the public who are directly affected by their activities. In order to deal effectively with potential unfairness, public administrators must be sensitized to the impact of their actions and decisions on individuals, and individuals must be empowered to participate meaningfully in the processes of government which affect them and their communities. Fundamental to such sensitivity and participation is effective access to public information held by government. This report deals with the underlying principles governing such access to information, as well as with the necessary exceptions.

Purpose

Presently, members of the public have no absolute right to obtain information kept by provincial government agencies in British Columbia. Decisions about what information should be disclosed in the public interest are discretionary; they are often made by individual ministers and there is no consistency.

The right of public access to government information is a basic incident of democratic participation in government, and does not require justification on the basis of any particular need. Information should not be kept unnecessarily confidential. Such a practice helps to create an atmosphere of mistrust and can lead to misinterpretation where information is partially disclosed.

It is the recommendation of this office that the basic policy should be that information within the control of government is generally available to the public. Exceptions to this general rule should be specific, few in number and subject to discretionary disclosure if there is no reasonable expectation that harm would result. Whether this policy is enshrined in legislation is a matter of public policy to be decided at the political level; that decision is outside the jurisdiction of the Ombudsman's office. However, the principles involved are those of administrative fairness which must at the very least be respected in administrative policy and practice.

Internal Administration

It is essential that the public be informed of its rights under an access to information policy. Legislation, by its nature, is a public method of providing rights. Non-statutory policy, lacking formal publication, depends for its effectiveness on the assumption by government of an active responsibility for publication, education and implementation. Some ministries have developed disclosure policies, but this office has found that such policies are often not widely known even within those ministries.

Those in government who are responsible for making the decisions on disclosure should be protected from real or perceived conflicts between their responsibilities under the access policy and their career prospects. Their performance should be measured by how well they comply with the spirit and intent of the policy. They need to have effective training, a clear measure of independence and positive direction for their important role from ministers, deputies and other senior officials.

Exemptions

As stated above, exceptions to disclosure should be as specific as possible. Most of them should be discretionary, and only available when a clearly stated injury test is met. While a government-wide policy must by definition be stated in general terms, it is anticipated that each ministry will be able to develop specific, objective criteria for exemptions. This will enable ministry staff to make decisions on disclosure requests in an efficient, consistent and timely fashion, and without the potential for real or perceived improper considerations or influences.

Because exemptions permit information to be withheld, it is important that government approach these issues in a manner consistent with the policy of access. Exemptions should be interpreted narrowly. The proper approach is to determine how much information can be disclosed, not how much can be withheld.

It is recommended that all exemptions be subject to a "public interest override", such that information should be disclosed in circumstances where there are reasonable grounds to believe that the information reveals or could assist in addressing a serious environmental, health or safety hazard to the public. Decisions on public interest should be made by the responsible minister.

Where access is denied, the government representative should be required to provide full reasons, including the specific exemption(s) being claimed.

Exemptions should be in the following categories:

(a) *Personal information not relating to the requester*

This category is concerned with limitations on the disclosure of personal information to someone other than the person the information is about. This basic exemption should be mandatory.

(b) *Third party information*

Certain kinds of information which are provided to a government agency by a third party should be protected. This would normally involve confidential business information such as financial, labour relations, commercial, scientific or technical information, and trade secrets. This should be a discretionary exemption because there must be some defined and demonstrable injury resulting from disclosure.

(c) *Economic interests of the province*

The government should have the discretion to refuse to disclose information where disclosure could reasonably be expected to be injurious to the financial interests of the government or its ability to manage its economy. In addition to the basic public interest override, this exemption should not be available in respect of information about the results of product or environmental testing carried out by any government agency, or private contractor on behalf of government, in the public interest.

(d) *Advice to government*

Policy advice or recommendations regarding government operations is a common discretionary exemption which generally covers the following categories: advice or recommendations developed for a Minister; records of consultations involving government officials, a Minister, their staff or consultants; positions or plans for negotiations carried on by the government; and personnel management plans and administrative plans not yet in operation.

(e) *Cabinet confidences*

Information which comes before cabinet in the form of advice, recommendations or policy considerations, and information which reflects the deliberations of members of cabinet should be protected from disclosure on a mandatory basis, subject to the following: factual data contained in some documents should be available, subject to other exceptions; and where cabinet is sitting as a quasi-judicial appeal body, parties affected by a decision should have access to all information which was before cabinet and on which it based its decision and to the reasons supporting the decision.

(f) *Intergovernmental information*

Information which has been obtained in confidence from another government or government agency should be protected by a mandatory exemption, but such information can and should be disclosed where the other government or agency consents to its release, makes the information public in another way or would be subject to a disclosure requirement under its own legislation.

(g) *Law enforcement, investigations and correctional matters*

There should be a discretionary exemption which protects the law enforcement records of police forces, other investigative bodies and correctional authorities where disclosure could reasonably be expected to interfere with an investigation, law enforcement or corrections matter.

(h) *Solicitor-client privilege*

The government should have the protection of solicitor - client privilege in respect of legal advice given. However, since the privilege belongs to the client, the government always has the option of waiving the privilege and disclosing the information in the public interest. This should, therefore, be a discretionary exemption.

(i) *Statutory prohibitions*

Government policy would necessarily be subject to current statutory prohibitions which restrict disclosure. However, these provisions were enacted without reference to an access policy. Accordingly, it is recommended that government undertake a comprehensive review of all statutory provisions which purport to limit disclosure and draft amendments necessary to ensure that all legislation complies with the substance and spirit of the access policy.

Personal information

One of the major exceptions to access is that the record falls under the category of "Personal Information". On the issue of disclosure, the right to privacy is the mirror image of the right to access. In coordination with a policy on the right of access, the government should also develop clear guidelines ensuring a general right of privacy in respect of all personal information in the control of government agencies subject only to limited, specified exceptions.

The objectives of such a policy should be to limit what information is collected, how it is collected, how it is used and the extent to which it is disclosed, allow a right of access to personal information about oneself, and provide a means for persons to correct errors or place their explanations or objections on the record.

Other issues

(a) *Costs and fees*

Because access to information is a public right, the policy should generally prohibit application fees and costs associated with a public employee's time spent fulfilling this public service. However, it is reasonable for the government to seek to recover some of the expenses associated with disclosing information, including real disbursements and, perhaps, those costs associated with unusually large or complex requests. It is recommended that the government establish a fee schedule which would specify copying charges and search fees only after some specified search and preparation time (five hours is the federal practice), but fees should not be payable if the search does not reveal any records.

A fee waiver policy should also be implemented. This office recommends that two main factors be considered:

(i) will there be a benefit to a population group of some size, which is distinct from the benefit to the applicant? or

(ii) can the applicant show that the research effort is likely to be disseminated to the public and that he or she has the qualifications and ability to disseminate the information?

The government should also consider a waiver of fees in all circumstances where the administrative cost of collecting the fee exceeds the amount payable and where, due to the financial situation of an individual or group, any fee would act as an effective bar to access. Where the costs of obtaining information are excessive, access is essentially denied.

(b) *Time limits / delay*

Delay is an inevitable hazard when dealing with government information. Without legislation, it is difficult to impose time limits within which access requests must be answered. The objective is that each agency will comply with requests promptly. It is recommended that the guidelines indicate clearly that a reasonable time would be within 30 days. However, where a large number of records is involved, consultations with other departments are necessary, or other unusual circumstances exist, a further 30 days should be allowed. There should also be reasonable time limits suggested in respect of notification to third parties or other persons affected by an access request.

(c) *Severability*

Where some of the information requested is subject to an exemption, then the government agency has to determine whether the balance of the record can be disclosed. The portions which cannot be disclosed must be "reasonably" severable.

Government forms should be designed with severability in mind. For example, where portions of a record are exempt from disclosure, there should be provision for the provider of the information to attach that material as appendices.

(d) *Trivial or vexatious requests*

It is recommended that guidelines not deal with this matter. Until an access policy is in effect, there is no basis upon which to determine whether there will be an excess of trivial or vexatious requests. This office recognizes that any definition of "trivial" and "vexatious" is necessarily subjective. A matter that appears trivial to a government official may be of great significant to the citizen who raises it. To permit a government agency to refuse access on this basis could effectively frustrate a clearly defined right of access.

Conclusion

Openness is essential in a democracy in order for us to participate meaningfully in our own self-government. Personal privacy and security are also essential rights in a healthy society. The principles set out in the Ombudsman's Public Report No. 26 are based in administrative fairness and not political philosophy. They are directed at ensuring an appropriate level of public access to information held by the provincial government and its agencies, and their application is reviewable under the *Ombudsman Act*.

Examples of Ombudsman investigations of complaints relating to access to information and privacy issues are found in case summaries at pages 101, 122, 126, 138, 147, and 187 of this report.

Children and Youth Issues

Review of *Family and Child Service Act*

In the latter part of 1990, the Minister of Social Services and Housing informed the Ombudsman's office that a review of the *Family and Child Service Act* was under way and invited us to suggest amendments to the legislation. Public Report No. 24, setting out this office's recommendations in detail, was released in February 1991.

Although this Act has withstood legal challenges over the past decade, our experience with it and its administration point to a number of issues that we believe should be addressed by government in close consultation with communities. The following are examples:

1. *Best interests of children*

Use of the "best interests" test in place of the current need of protection test across Ministries in all child welfare matters concerning custody, access and guardianship of children is consistent with the current provisions of the *Family Relations Act* and the United Nations Convention on the Rights of the Child. Adherence to this test requires that legislative provisions extend the circumstances under which family support services are provided.

2. *Prevention and family support*

While Ministry policy encourages the provision of family support services as an alternative to child apprehension, current statutory provisions do not provide for an adequate range of preventive service options. An increase in the diversity of flexible approaches to family support and child welfare issues should emphasize consensus-seeking and aim to reduce the need for apprehensions and adversarial proceedings.

3. *The role of the Superintendent*

Definition of the role of the Superintendent of Family and Child Service is ambiguous under the current legislation. The roles of standard setter, service monitor, inspector/auditor, guardian and advocate have variously been given to this position and there is a need for clear statutory definition.

4. *Mediation and the court process*

The need to distinguish between the social work roles of investigator/apprehender and family and child supporter has been recognized through recent administrative reorganizations within the Ministry. Recent amendments to child welfare legislation in Nova Scotia and Saskatchewan, as well as B.C.'s *Family Relations Act*, support the use of mediation and the provision of access to qualified mediators in child welfare matters. This office has long supported the availability of family advocates to ensure that the child's views and interests are properly represented to the court. Cases which we have referred to the Attorney General's Ministry where we believe a child's interests are not being appropriately addressed have always been met with reasonable and thoughtful responses. See, for illustration, the following case summaries: Teenager refuses to return home (page 129) and "A youth's demand to be heard" (page 136) The guardian ad litem programs in the U.K. and U.S.A. appear to be viable options to ensure that the child's best interests are properly represented.

5. *Due process*

The apprehension of children is one of the most serious interventions the province can make into family lives. In most instances, the apprehension of a child is planned, based on problems exhibited over a period of time. In emergencies, the apprehension authority of social workers, often with the assistance of police officers, is necessary. When a proposed apprehension is not the result of an emergency, the issuance of a warrant by a justice of the peace or a judge should be considered, similar to the provisions of Ontario's child welfare legislation. The onus would then be on the Ministry to demonstrate the need for apprehension and to show cause why other family and child support measures have been unsuccessful or are not appropriate.

Another matter of great concern to this office is delays in child welfare cases before the court. If we are to consider the best interests of the child as the test for apprehensions and appreciate the child's sense of time, inappropriate delays should, wherever possible, be avoided. When matters are before the courts, there must be assurances that all parties with a significant interest in the matter and who have an ability to assist in the resolution should be notified and involved in the process. These parties include children, parents, relatives, foster parents and other alternate caregivers or advocates.

6. *Legal costs*

Parents often complain to this office about the legal costs in "defending" against an apprehension, although the Ontario courts have said that, except in very exceptional cases, costs should not go to the party that proves its case. We believe that if the judge decides that bad faith or negligence by either party (Ministry or parents) is evident, the judge should have authority to award costs.

7. *Native lay panels*

Native organizations have spoken about "cultural genocide" when referring to past interventions by child welfare systems. A large number of children in the Ministry's care are native, and many of them are placed in non-native families, resulting in the cultural estrangement of the children. One method for increasing the participation of native peoples in the decision-making process is to establish native lay panels to sit with a Provincial Court judge in child protection cases. Judges in several recent B.C. custody cases have directly involved native elders in placement decisions.

8. *Integration*

The Ombudsman's Public Report No. 22 recommended that existing legislation, regulations and policies establishing the rights of special-needs children, youth and their families be consolidated into a provincial statement of principles consistent with the Canadian Charter of Rights and the U.N. Convention on the Rights of the Child.

Public Report No. 22 also focuses on the complexity of the current child, youth and family service system and suggests the need for consolidating various pieces of children's legislation under one Act. As well, B.C. should seriously consider consolidating legislation while reviews of the *Family and Child Service Act*, the *Mental Health Act* and the *Community Care Facilities Licensing Act* are under way. Previous suggestions about the use of mediation in child welfare matters also require review of the *Family Relations Act* where mediation is currently authorized.

Standards and accountability must also be clarified in child welfare legislation. Public Report No. 22 points to the need to strengthen and integrate current case management planning and reporting mechanisms.

In line with the mandate provided to the new Child and Youth Secretariat, a close examination of the most effective organizational means to deliver and integrate services to children, youth and families at the local level is required while reinforcing the provincial government's role as funder, policy developer, standard setter and monitor.

9. *Anonymous complaints*

There is good reason for treating information about a child's welfare in a confidential manner. While parents under investigation may want to know who made an allegation, in reality the social worker becomes the source of the complaint through the process of investigation. Nonetheless, it may be appropriate for legislation to allow the Ministry to pursue a malicious informant (where the identity is known) rather than put the onus on the maligned family to pursue the matter through the civil courts.

10. *Public participation*

The process of administrative and legislative reform in child, youth and family services requires a broad process of public participation through either a White Paper or an invitation for submissions from the public. We have suggested that the Child and Youth Secretariat could act to co-ordinate and support this process through the newly revitalized local and regional Child and Youth Committees.

11. *Appeal and administrative review*

While the majority of apprehensions will be reviewed by the courts, internal administrative review and external appeal procedures should be considered on issues such as the availability of family and child support services.

Appeals for "social services" are provided for in the *Guaranteed Available Income for Need Act*, but the relevant sections have not yet been proclaimed. These social services may be more appropriately housed in an amended *Family and Child Service Act*. If the Ministry is expected to offer the least intrusive service to families before considering apprehension, it is reasonable to allow families who are refused services access to reviews and appeals similar to those provided to income assistance applicants.

12. *Transitional support*

The current Act does not authorize the provision of services to children beyond the arbitrary age of 19 years. This age is irrelevant for many youth, especially those with developmental disabilities. A review of age requirements, restrictions and limitations governing the delivery of services to and acceptance of responsibility by young people is advisable.

With the combined commitment of government and communities to comprehensive review and reform, we look forward to significant improvements to B.C.'s child, youth and family services system during the next year.

Two case summaries in this report well illustrate some of the concerns considered in our review of the *Family and Child Service Act*. These are found on page 131 ("Child apprehended after brother's death") and page 134 ("Locked out by mother, child apprehended").

U.N. Convention on the Rights of the Child

When the Convention on the Rights of the Child was unanimously adopted by the United Nations General Assembly in November 1989, the international community took a major step towards recognizing the basic dignity and rights of children in all parts of the world, including the rights to survival, protection and development. The Convention provided a new avenue for children, youth, families and those who work with them to ensure their fair treatment in the decision-making of all levels of government.

Before Canada could proceed to ratify the Convention, indicating that it agreed to be bound by this international treaty, the federal government had to consult all provinces to solicit their support. In February 1990, the Ombudsman's office and the B.C. Human Rights Council hosted an interministerial meeting to discuss the impact of the Convention on British Columbia's legislation and government policies. The province subsequently confirmed a preparedness to support Canada's ratification of the Convention, signalling that B.C. has committed itself to protecting and complying with the fundamental human rights of children in government policies and programs.

The Ombudsman's office, in conjunction with an initiative of UNICEF Victoria, convened a seminar in October 1990 for professional workers in the community to participate in discussions on the implications of the UN Convention for children throughout the province. The newly appointed federal Minister responsible for children attended and spoke about the formation of a federal Children's Bureau, which is expected to play a lead role in promoting child-sensitive federal policies and in assisting in the co-ordination of federal programmes that focus on children, youth and their families.

In the spring of 1990 the Canadian Council on Children and Youth contacted our office to inform us that they were planning to hold a three-day summer camp in Ottawa in August for young people. The Council wanted participants from all regions of Canada to discuss the proposed United Nations Convention on the Rights of the Child. The results of the discussions at the summer camp would be presented to the Prime Minister for consideration before he went to host the United Nations Summit in September. In preparation for the camp, the Council invited every province to sponsor a workshop for youth to discuss the provisions in the Convention.

The Deputy Ombudsman for Children and Youth was in regular contact with a group of young people in the Victoria area who were participating in a youth services program called Cooks Down Under. Our office sponsored and videotaped a workshop where these youth discussed their personal experiences and views about their rights and how to ensure those rights are respected. The Council had posed many challenging issues and questions for the workshop participants to explore. Five participants submitted essays to the Council with applications for the summer camp. Their contributions to the workshop and to the Council were articulate and thoughtful. We knew the Council was faced with a difficult task of selecting one youth to represent British Columbia.

One young man was selected to participate in the summer camp as one of two young people representing British Columbia. We saw him off to spend three days in Ottawa, meeting with young people from across the country to discuss and debate the important issues in the United Nations Convention on the Rights of the Child. He was unanimously selected by his peers at the camp to represent Canada's youth at a meeting scheduled to brief the Prime Minister prior to the Summit. It was a pleasure for our office to know that this young man had the opportunity to be directly involved with the leaders of the country in discussions on this important United Nations Convention.

The importance of the U.N. Convention in encouraging international co-operation in the protection of the rights of children is reflected in the case summary entitled "Abducted to Ireland", on page 128 of this report.

Abuse of children in the care of the state

When allegations of sexual abuse at Mount Cashel's Home for Boys in Newfoundland became the subject of a national controversy, we began to discuss publicly the abuse of children which can occur while those children are in the care of the state. When children are taken into care, they do not necessarily receive the kind of care they need. Indeed, some children may be further abused while in the care of state-approved resources. We are now aware of individuals who have come forward to say that they were abused while in a foster resource or a state-operated institution. The tragedy of Mount Cashel is that it does not represent a single incident in a single province. Native men and women have told us about abuse in residential schools. The Youth in Care Network reports that some young people were abused for the first time while in the care of the state.

Our office has received a growing number of complaints from individuals, mostly adults, who have told us stories of abuse received at the hands of caregivers after they were removed from their family home and put into state care. It has not been easy for these people to discuss their painful memories, and we respect their courage in coming forward. The details of their stories vary, as do their experiences in trying to deal with abuse. They have come to our office now because they are at a stage in their lives where they feel safe enough to confront these painful memories. In their efforts to heal, some of these individuals are seeking redress for the pain and suffering they have experienced.

When someone has experienced pain at the hand of another, it is common for the victim to want the person responsible for his or her trauma to apologize for the actions. Seeking an apology may not sound like a major issue, but it is very important to survivors of abuse simply to be told that someone is sorry for what happened, and that it should not have happened. The apology not only acknowledges that the victim was not responsible for the actions that caused harm to him or her, but also acknowledges that the perpetrator of the abuse was responsible. When abuse occurs while a person is in the care of a contracted resource, the victim often seeks an apology from the state, as it is the government which is responsible for contracted services.

Victims of abuse often tell us that they want financial compensation for their pain and suffering. Some officials may question the validity of the claims, suggesting that such a request is inappropriate and means these individuals are only interested in acquiring cash. In our society, however, we acknowledge the victims of wrongdoings with financial compensation as an important acknowledgement of the pain and suffering experienced by victims of abuse. Limitation periods often remove the ability to sue for such damages.

In addition, victims of abuse may request assistance to allow them to seek counselling. The Ministry of Social Services and Housing may refer its clients to counselling. The Criminal Injuries Section of the Workers' Compensation Board can fund counselling services to the victim of a crime. A charge or conviction is not always necessary for a victim to be eligible for such compensation. The incident is reported to the police and an application is filed with the Criminal Injuries Section for consideration.

The Office of the Ombudsman has been invited to offer recommendations to the current review of legislation and policy which affects services to children and youth in British Columbia. We share a goal with government to implement safeguards through changes in legislation, policies and procedures to ensure that the care we provide to children and youths is of the highest standard. We share the goal of wanting to prevent the risk of abuse occurring in resources that are either provided or approved by the state.

Our office has initiated discussions with government officials in the Ministry of Social Services and Housing and the Office of the Public Trustee to look at the development of a protocol or a policy to be applied when responding to individuals who report having been abused while in state care. We will be presenting the results of these discussions in a public report.

Residential resources for children and youth

In a growing number of cases, Ministry social workers are telling our office that there is a shortage of appropriate residential resources for children and youth in the Ministry's care. This is not necessarily as a result of inadequate funding but is often the result of a shortage of alternate caregivers coming forward to provide foster homes or contracted child and youth care resources.

Fewer children and youth are being taken into the Ministry's care than was the case in the past, but those who do come into care are reported to have more serious needs. In 1988, this office wrote to senior officials in the Ministries of Social Services and Housing and Health requesting clarification about the mandates of these Ministries in providing residential services to children and youth with serious behavioural and emotional problems. As detailed in Public Report No. 22, residential services to children and youth may be provided through the Ministries of Education, Social Services and Housing, Health, Solicitor General, and Labour and Consumer Services. This complex system is currently under review by the newly established Child and Youth Secretariat.

B.C. is one of many jurisdictions that appears to be facing what has been termed "a crisis in foster care". A consensus appears to be evolving that new approaches to the provision of residential out-of-home services to special-needs children and youth are required. Voluntary foster parents are increasingly being replaced by professional caregivers who are demanding fair compensation for the difficult tasks they are being asked to perform. Residential programs increasingly require integrated support from education, health and other specialized sectors.

It is hoped that the trend towards the provision of increased family support services will continue and further reduce the need to place children away from their parents. But when the state intervenes and apprehends children, sometimes with the agreement of the parents, then children, parents and the public must be assured that adequate and appropriate residential and support services are available. We look forward to continuing progress in addressing these complex issues through the comprehensive review of services being undertaken by the Child and Youth Secretariat.

Document disposal following investigations

In 1988, at the invitation of the Ministry of Social Services and Housing, we were invited to submit our comments regarding the completion of Ministry child protection investigations. We often receive complaints from parents, after a Ministry investigation of a report that their child was in need of protection, that the results of that investigation had not been clearly communicated to them in writing. While many of these parents understand and support the need for the Ministry to follow up on reports that a child is in need of assistance, they become concerned when they are not advised of the results. They often express concerns to us about the content of Ministry files and the file destruction process after completion of an investigation.

Current Ministry policy requires that a letter be written to parents following an investigation that results in one of the following findings:

1. The allegation is unfounded and no further Ministry involvement is necessary;
2. Some concerns are evident and family support services are indicated (parents may or may not choose to accept support services offered by the Ministry, but Ministry concerns may be heightened if necessary support services are refused); or
3. The child should be apprehended (in which case a presentation to family court is required within seven days after apprehension).

We are encouraged by current Ministry initiatives to further define the results of their child protection investigations through the Superintendent's task force on social work standards. Commonly, when the Ministry has concluded, upon investigation, that an allegation is unfounded and that no family support services were necessary, a letter is sent to parents indicating that the file would be destroyed after two years. The delay of two years acted to protect parents in case a similar allegation is made. File information obtained from the previous investigation could result in a Ministry decision not to investigate again.

The *Documents Disposal Act* permits government files to be destroyed after seven years. Earlier disposal must be reviewed by the Public Documents Committee. In accordance with the policy of destroying files from unfounded investigations after two years, the Ministry has applied to this committee for an exception. There is some concern about destroying files that may contain important historical information about a Ministry investigation. This matter is currently under review by the Public Documents Committee. We have had preliminary discussions with the Provincial Archivist, who chairs this committee, and the results of the committee's deliberations will be monitored to ensure that the outcome is consistent with the stated policy, principles of administrative fairness, and the paramount consideration of safety and well-being of children. With respect to the undertakings made to parents regarding unfounded allegations, we have been advised that the Ministry will ensure that those files are destroyed.

Natural Resources Management

Consensual dispute resolution

In July 1990 the Ombudsman's office and the University of Victoria Institute for Dispute Resolution co-hosted a two-day symposium at Dunsmuir Lodge called "Getting Together: New Ways of Resolving Natural Resource Conflicts". It brought together leading North American experts in natural resources and environmental conflict resolution with senior representatives from aboriginal groups, environmental organizations, key government agencies, business and organized labour. Consensual dispute resolution was recognized by the participants as a preferred option to confrontational litigation, civil disobedience and raw politics for settling land use disputes, and the symposium considered how best to apply this process to the B.C. experience.

Confrontational processes damage relationships. However, land use disputes typically involve a variety of legitimate yet apparently competing interests that are dependent on one another for future enjoyment of the natural resource. This dynamic relationship requires communication, understanding and trust, which can only be achieved by negotiated settlements. While it is unrealistic to expect any group to abandon its own major interests, it is necessary to redefine self-interest in a way that takes into account this reality of interdependence.

While it was recognized by all participants that a change from confrontational to consensual processes is slow, wrenching and complex, the first major step is a change from an attitude of destructive confrontativeness to one of constructive co-operativeness. It was evident among the leaders of the major sectors involved in land use issues in B.C. attending the symposium that this change in attitude is already under way.

The Ombudsman's office can often play a role in resolving land use disputes because of its jurisdiction over provincial government administration. Over 90 percent of the land in B.C. is owned by the provincial Crown, and the government has a direct involvement in its management as owner, regulator, licensor, contractor, user and trustee of the public interest. Therefore, disputes concerning land use will inevitably involve provincial government agencies, and their administrative actions will often draw in the Ombudsman's office.

The role of the Ombudsman's office as an impartial investigator, independent of government, can make it a useful agent of consensual dispute resolution. It can lay a foundation for negotiation by establishing a common set of facts, identifying the parties with major interests that should be involved, and narrowing the issues in dispute. As well, because of its systemic role, the Ombudsman can advise government on ways to prevent future disputes through long-term planning, community participation and integrated resource management. These concepts were discussed in the Ombudsman's 1988 Annual Report at pages 30-32.

Integrated Resource Management

A driving force of the British Columbia economy throughout the twentieth century has been the sale of raw and processed forest products. The contribution of first-growth timber to the gross provincial product has been so significant that, until relatively recent years, few have questioned the primary use of forested lands for timber harvesting. This predominant attitude is reflected in the history of the province's natural resource legislation, under which responsibility was given to cabinet to designate Crown land as "provincial forest" to be managed for the sustained production of saleable timber. Today the dominant role of the Ministry of Forests in natural resource management is reflected not only in the magnitude of its legislated responsibilities but also in the size of its organization, which dwarfs that of other resource agencies both in Victoria and in the 43 forest districts throughout the province.

The past two decades have witnessed a major change in public opinion about the validity of the processes regulating the use of forest land. The reasons for this evolution are diverse. One significant factor is the increasing contribution to the economy of industries such as tourism, which in some forested areas of the province closely competes with the forest industry in the creation of revenue and may be negatively affected by the widespread impact on the landscape of clearcut openings. Another influence is the increased mobility of the significant segment of the public that values the enjoyment provided by hiking, cross-country skiing, fishing, kayaking, wilderness camping and the many other activities associated with outdoor recreation. Aboriginal communities are outspoken and articulate about their desire to exercise a measure of control over lands with which they have a historic association. Water user associations express profound concerns about the effects of timber harvesting operations on the quality, quantity and timing of flow of the water on which they depend for domestic and agricultural purposes. Significant too is a growing public awareness of the finite nature of resources once assumed to be practically limitless, giving rise to the notion that to conserve ecosystems in whole or in part simply because they represent something unique and irreplaceable is a legitimate goal in resource use planning. Finally, the last two decades have seen a much increased awareness of the importance of ensuring environmental integrity and sustainable development of all natural resources. All of these factors have contributed to increased public concern about and demand for meaningful involvement in the planning process.

Responsibility for integrated resource management on forest lands was formally vested in the Ministry of Forests with the passage in 1978 of section 4(c) of the Ministry of Forests Act. Section 4(c) provides that it is a purpose and function of the Ministry to "plan the use of forest and range resources of the Crown, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the Crown and with the private sector". At the policy level, steps have been taken to lessen the impact of timber harvesting operations on other resource uses through such initiatives as guidelines designed to minimize the visual impact of clearcuts and to increase protection of wildlife and fish habitat. Increased consultation with other resource agencies and ministries has been complemented by efforts to provide greater opportunity for public involvement. Local forest districts and regions have been given flexibility to experiment with planning processes designed to emphasize negotiation and consensus among interest groups. In some areas where considerable controversy is apparent, mediators from the private sector have been appointed to attempt to facilitate the process of consensual resolution.

In the State of Washington, the impetus to find a workable mechanism for the resolution of disputes over the use of forest land was provided by the high cost of ongoing litigation. A court decision on native fishing rights in the mid 1980s was the starting point for negotiation of the Timber-Fish-Wildlife Agreement, which since 1987 has provided a structure for representation of all legitimate interests at the bargaining table in forest land planning processes.

Previous reports from the Ombudsman's office (for example, Public Report No. 15 on coastal resource management and the 1988 Annual Report, pp. 30-32) have emphasized that administrative fairness requires that all significant and legitimate interests be accorded meaningful representation in integrated resource management planning. Adherence to this principle is not achieved easily. It is tempting, therefore, to dismiss it as a concept that is philosophically sound but impractical to implement. Nevertheless, there are compelling reasons why efforts to create fair decision-making processes must be determined and wholehearted.

While there exists a political prerogative for government to identify through legislation and policy certain resource uses that will receive particular encouragement, there is a social imperative that demands that the co-existence of different resource uses on common land be achieved through meaningful negotiation rather than through imposition of force; through mutual recognition of one another's interests rather than through forced exclusion of interests. Much of the frustration associated with current forest disputes is due to the fact that confrontation, whether through force of law or civil disobedience, is a far simpler tool to understand and use than is co-operation leading to consensus, even though consensus brings with it greater long-term rewards for the community at large. We know confrontation well, and we are just beginning to learn to make co-operative negotiation effective.

There are no real winners when each interest seeks to maximize its gain at the expense of other parties, when resolutions are imposed by force of legal authority or popular opinion, and when compromise is seen in terms of what is given up rather than what is gained by mutual benefit.

Temporary "victories" leave a legacy of distrust that splits communities when workers in the forest industry fear for their jobs and other interest groups fear the impact of the forest industry on fish and wildlife, outdoor recreation, tourism, and water supplies. The enduring conflict that results is both economically and socially destructive.

Complaints to this office related to integrated resource management have been on the increase during the past few years. They come from a variety of organized interest groups and from individuals. One such complaint received in 1990 illustrates some of the central issues that arise. The complainant was a retired logger who was concerned about the process of reviewing an Integrated Resource Study that had been initiated by the Ministry of Lands, Forests and Water Resources in a watershed in 1975. Participants in the study were drawn from four provincial ministries, Environment Canada, a university faculty of forestry, and the company that held a Tree Farm Licence in the area. The study identified fisheries, timber resources and outdoor recreation as the three dominant resource values in the watershed, and recommended that logging in portions of the watershed be permitted, subject to constraints with respect to road construction; buffer strips in riparian zones; size, location and shape of clearcuts; and maintenance of firebreaks. The recommendations of the study were implemented in a "resource folio" that was written into the forest company's Management and Working Plan. A few years later, the company requested revision of constraints on the size and dispersal of clearcut openings because of loss of timber due to blowdown between cut openings and because of the high cost of road construction associated with small clearcuts. In response to the request, the Ministry of Forests removed the constraints on the size of the clearcut openings.

In June 1990 the Minister of Forests announced that public concern indicated a need to review the 1975 plan to ensure that forest management activity in the watershed reflected both the resource management knowledge and public expectations of the 1990s. The review team comprised representatives of the provincial ministries of Forests, Environment, Tourism and Energy, Mines, Petroleum Resources, and the federal Department of Fisheries and Oceans. In addition, the local regional district was invited to appoint a representative to reflect the concerns of the general public, and public "open houses" were held to describe the activities of the review team and receive public representations.

The complainant argued that the review process had a built-in bias towards timber harvesting. He noted that the Ministry of Forests had appointed one of its own employees to chair the review team rather than providing for an independent chairperson, and that the delegate appointed by the regional district happened also to be an employee of the forest company. The complainant claimed that other resource users such as commercial fishermen, trappers and outdoor recreationists should be permitted to appoint representatives to the team.

The challenge facing the Ministry of Forests, as various interests become more aggressive in stating their cases, is how best to devise planning processes that are both fair and perceived to be fair. The latter is an important point in view of the ministry's dual responsibilities. Achieving the appearance of impartiality may be practically impossible for a ministry which is charged with the stewardship of a single resource, timber, at the same time as it is responsible for making decisions affecting the rights of all resource users on timber lands. However sincere the efforts of the ministry to ensure adequate recognition of all interests in a planning process, the ministry is vulnerable to the criticism that its timber management duty colours its approach to integrated resource management. In these circumstances, the task facing the ministry is not an enviable one.

From the ministry's point of view, the

choice of a ministry employee as chairperson of the team was sensible, as the ministry was leading the process. The ministry also pointed out that as every member on the team had what amounted to veto power in a process that depended on consensus for its findings, it little mattered who chaired the process. However, at a time when the ministry is acutely aware of the need to appear value-neutral on forest management issues, it is most important that it avoid the appearance of imposing direction on processes of consensual resolution. To leave the choice of a chairperson to team members encourages a sense that all at the table are equal and cuts short any possibility of later criticism of bias. Where the matters to be decided by an integrated resource management process are particularly controversial, there may be merit in bringing in a mediator, recognizing that short-term cost may be outweighed by the long-term benefits of a process that is seen by its participants to be fair.

Then there was the issue of the composition of the review team. Faced with the challenge of putting together any integrated resource management planning team which includes representation from what is referred to as the "private sector" in section 4(c) of the Ministry of Forests Act, the ministry runs into tough questions. How can competing and overlapping interests be defined with any certainty? Once they are defined, which interests ought to be considered legitimate and significant? Should some interests receive greater recognition than others, and, if so, how should their varying levels of representation be calculated? Once interest groups have been brought to the table together, how can agreement on planning decisions be reached among seemingly opposed interests? And, finally, how can the Ministry of Forests reconcile the apparent conflict between its legislated decision-making authority and the fact that both fairness and pragmatism suggest that consensual agreement in integrated resource management planning may be the most effective process in the long term? These are the types of questions that the ministry is grappling with at the present time, and there are no obvious or easy answers.

The ministry's decision to invite representation from the regional district in the process that was the subject of the complaint to our office was a well-intentioned effort to ensure that community concerns were brought to the table. The fact that the regional district's nominee was a forest company employee did not necessarily mean that that person would not reflect the concerns of competing interests in an unbiased manner; however, elements of the public who opposed the interests of the forest company might be inclined to reach that conclusion, thus placing the credibility of the process in jeopardy and defeating the purpose of the ministry's invitation. A second difficulty was presented by the fact that the variety of interests represented by "the public" cannot be treated as a homogeneous entity capable of being represented by a single individual. Ironically, the ministry's initiative to open up the review process to public participation had left it vulnerable to criticism that it was favouring particular interest groups and excluding others.

We found the complaint to be not substantiated, insofar as the Ministry of Forests was acting according to the authority placed upon it by section 4(c) of the Ministry of Forests Act, but expressed our reservations about whether the process in question adequately complied with principles of administrative fairness. We indicated the intention of this office to engage in a comprehensive study of the application of the principles in integrated resource management during 1991. In November 1990 this office released a public report that spoke to the co-ordination of services by a variety of government ministries and agencies to children and youth in the province. It is timely for a similar study to be made of the co-ordination of services in the management of natural resources.

Public Report Updates

Ordinarily, the findings of investigations by this office are reported only to complainants and to those government agencies consulted in the course of investigations. Occasionally, however, findings are released as public reports, under section 30(2) of the *Ombudsman Act*, either where an investigation was initiated by the Ombudsman into a matter of wide public concern or where the complaint has been the subject of significant public interest and the complainant has authorized public release of this office's findings. The following public reports have been released by this office during the term of the current Ombudsman.

1987		
April	No. 5	*The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People*
June	No. 6	*Liquor Control and Licensing Branch: Fairness in Decision-Making*
July	No. 7	*Workers' Compensation System Study*
November	No. 8	*SkyTrain Report*
November	No. 9	*Practitioner Number Study*
1988		
February	No. 10	*B.C. Hydro's Collection of Residential Accounts*
March	No. 11	*Pesticide Regulation in B.C.*
August	No. 12	*An Investigation into the Licensing of the Knight Street Pub*
August	No. 13	*Abortion Clinic Investigation*
October	No. 14	*An Investigation into Complaints of Improper Interference in the Operations of the B.C. Board of Parole, Particularly with Respect to Decisions Relating to Julie Belmas*
December	No. 15	*Aquaculture and the Administration of Coastal Resources in British Columbia*
1989		
January	No. 16	*Police Complaint Process: The Fullerton Complaint*
January	No. 17	*Willingdon Youth Detention Centre*
July	No. 18	*The On-Site Septic System Permit Process*
September	No. 19	*The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)*
September	No. 20	*An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd.*
1990		
July	No. 21	*Sustut-Takla Forest Licences*
November	No. 22	*Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*
1991		
February	No. 23	*Graduates of Foreign Medical Schools: Complaint of Discrimination in B.C. Intern Selection Process*
February	No. 24	*Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act*
March	No. 25	*Public Services for Adult Dependent Persons*
March	No. 26	*Access to Information and Privacy*

The following section provides a summary of the public reports released in 1990 and an update of earlier reports in respect to which noteworthy developments have taken place during the last year.

Many of the 22 public reports released since 1986 have provided systemic analyses of policies and practices of individual Ministries and other government agencies. Other public reports have identified administrative unfairness to result from inefficiencies in co-ordination among several agencies that may be involved in the provision of a service or administration of an area of activity. Public Report No. 22, released in November 1990, speaks to the pressing need to improve co-ordination of the efforts of the several Ministries providing services to youth in British Columbia.

This section also provides an update of an earlier public report that addressed the issue of co-ordinated management in the natural resources field. Public Report No. 15 resulted from an investigation of a series of complaints related to conflicts arising between operators in the emerging business of aquaculture and other users of the coastal shoreline.

No. 11 (March 1988):

Pesticide Regulation in British Columbia

Report No. 11 recommended a change in the process in which pesticide use permits were granted. We were concerned that the public was notified of pesticide use permits only after the permit had been granted and had no opportunity to comment on the proposed use of pesticides on public land while the permit was being considered. The Minister of Environment has now changed the *Pesticide Control Act* Regulation to reflect out recommendation for greater public participation.

Permit applicants are now required to publish details of their proposed pesticide use in a newspaper circulated in the area concerned. The public will then have 30 days to submit their concerns regarding the application to the applicants and to the regional manager of the Pesticide Control Program. This ensures that the local knowledge of people who live and work in an area will be taken into account before making any decision about whether pesticides should be used on public land. It also avoids the situation created under the old regulation, under which those who had concerns had to go to the time and expense of appealing a permit decision that had already been made. The Ombudsman's office is pleased to see this change that provides for timely public notice and consultation.

No. 15 (December 1988):

Aquaculture and the Administration of Coastal Resources in British Columbia

Various initiatives that have been undertaken by the Ministry of Agriculture and Fisheries satisfy the majority of our concerns with respect to an adequate regulatory framework for the aquaculture industry, which was recommendation #1 in Public Report No. 15.

Discussions about this public report tend to overlook the fact that the report was, in essence, a case study of an industry which established itself faster than either the local or provincial governments could draft appropriate laws to govern its development and monitoring. The report was a case study on land use conflicts in the context of coastal resources, and this office was and continues to be concerned with the provision of an adequate interministerial system for integrated management of the coastline as well as with the particular conflicts related to aquaculture, which have in many instances been resolved.

As will be seen in some of the introductions to the Ministry case summaries in this report, resource or land use conflict is a phenomenon which is likely to spread and intensify throughout the province, with areas of considerable conflict concentrated on the coast itself. To identify and resolve these conflicts at the earliest possible stage is one of the goals and benefits of a resource management system in which provincial priorities are identified through public consultation, and extensive co-operative planning is conducted with local governments. In this way, critical questions can be addressed before serious conflicts arise. The following are examples of such questions:

- Why is the coast important? What do we use it for now? (inventory)
- What do we want to use it for in the future? What type of developments would we want to restrict? (planning and priorities)
- How can we protect remote areas which may be of immense value in the future but in which there are now few residents to object to certain developments? (management systems)

The Ministry of Crown Lands continues to develop its computerized Geographic Information System (GIS), which will be of central importance in the development of any coastal management program. The Ministry of Tourism is at present conducting an inventory of tourism resources in which the B.C. coastline is, as expected, a major focus for study. The Ministry of Agriculture and Fisheries conducts its Coastal Resource Identification Surveys (CRIS) as funding is available, while the Ministries of Environment and Parks identify areas of critical importance within their respective mandates.

What is needed is a system which integrates these diverse interests and mandates in a legislated framework of priorities in which the public can fully participate. This office recognizes the formidable challenge of implementing such a system, yet we have seen no evidence which would suggest that the benefits would not far outweigh the costs. As this office has previously stated, the best resources management systems are demonstrably fair, and fairness is what integrated resource management is (or should be) all about.

Coastal management, as practised by our American neighbours, does not yet exist in British Columbia. It should.

No. 21 (July 1990):

Sustut-Takla Forest Licences

The award of a forest licence in north-central B.C. was the subject of a complaint by the mayor of Hazelton. The licence, for 400,000 cubic metres of timber, had been awarded to two Prince George companies which had submitted a joint application. Their proposal called for harvesting the timber east to Prince George. Two other companies which had bid on the licence had indicated an intention to haul the timber west to Hazelton. The award of the licence had significant implications for the economic well-being of the village of Hazelton.

Two major allegations were contained in the mayor's complaint. First, she claimed that the Ministry of Forests had failed to follow prescribed statutory procedures, set out in section 11(4) of the *Forest Act*, in the assessment of the applications for the licence. Second, she suggested that the Ministry of Forests, the cabinet or the Premier might have usurped the statutory responsibility of the Chief Forester to decide which company or companies the licence should be awarded to. The complaint made reference to several other issues of a less serious nature.

Our investigation found that the assessment of the various applications for the licence had been carried out thoroughly and in accordance with the criteria stated in section 11(4) of the *Forest Act*. Section 11(4) requires the Chief Forester to evaluate the potential of each application for "(a) creating or maintaining employment opportunities and other social benefits in the Province; (b) providing for the management and utilization of Crown timber; (c) furthering the development objectives of the Crown; (d) meeting objectives of the Crown in respect of environmental quality and the management of water fisheries and wildlife resources; and (e) contributing to Crown revenues." The details of the applications were carefully considered against the section 11(4) criteria by technical experts in several branches of the Ministry (Valuation, Engineering, Industrial Development and Marketing, and Timber Policy) and by two regional offices of the Ministry (Prince Rupert and Prince George). When the assessment was complete, the Timber Policy Branch forwarded to the Deputy Chief Forester an evaluation report which indicated that the internal evaluations of the applications were overwhelmingly in favour of selecting an option by which the timber under the licence would be moved west to Hazelton rather than east to Prince George.

The question of usurping the Chief Forester's duty arose because of the wording of section 11(5) of the *Forest Act*, which provided, at the time the forest licence was awarded, that "the Chief Forester shall approve one or more applications for all or part of the advertised volume of timber..." A later amendment, passed on July 4, 1988, removed this discretionary authority from the Chief Forester and placed it with the Minister of Forests.

The Deputy Chief Forester routinely assumes the delegated powers of the Chief Forester, and did so in the handling of the Sustut-Takla licence applications. The Deputy Chief Forester recommended that the entire 400,000 cubic metres of timber under the licence should flow west, and that that volume should be divided between the two companies from that region. This recommendation was forwarded to the Minister of Forests, who made a presentation to cabinet. Following the cabinet meeting, the Deputy Chief Forester was advised that cabinet had concluded that the forest licence should be awarded to the Prince George applicants. The Deputy Chief Forester stated that he then had no realistic option but to award the licence to these Prince George companies.

This office concluded that, in acting upon the dictation of the Minister of Forests, the Deputy Chief Forester had abdicated the discretionary responsibility provided to him under section 11(5) of the *Forest Act*. We suggested that the Minister of Forests reconsider the applications, evaluations and recommendations received, and reissue the forest licence as he considered appropriate pursuant to the requirements of the amended section 11(4) of the *Forest Act*. The Minister agreed and subsequently replied that, after reviewing the procedures that had been followed and the award of the forest licence, he had concluded that the decision to award the licence to the Prince George companies should not be changed. On receiving this response, we considered the issue resolved.

No. 22 (November 1990):

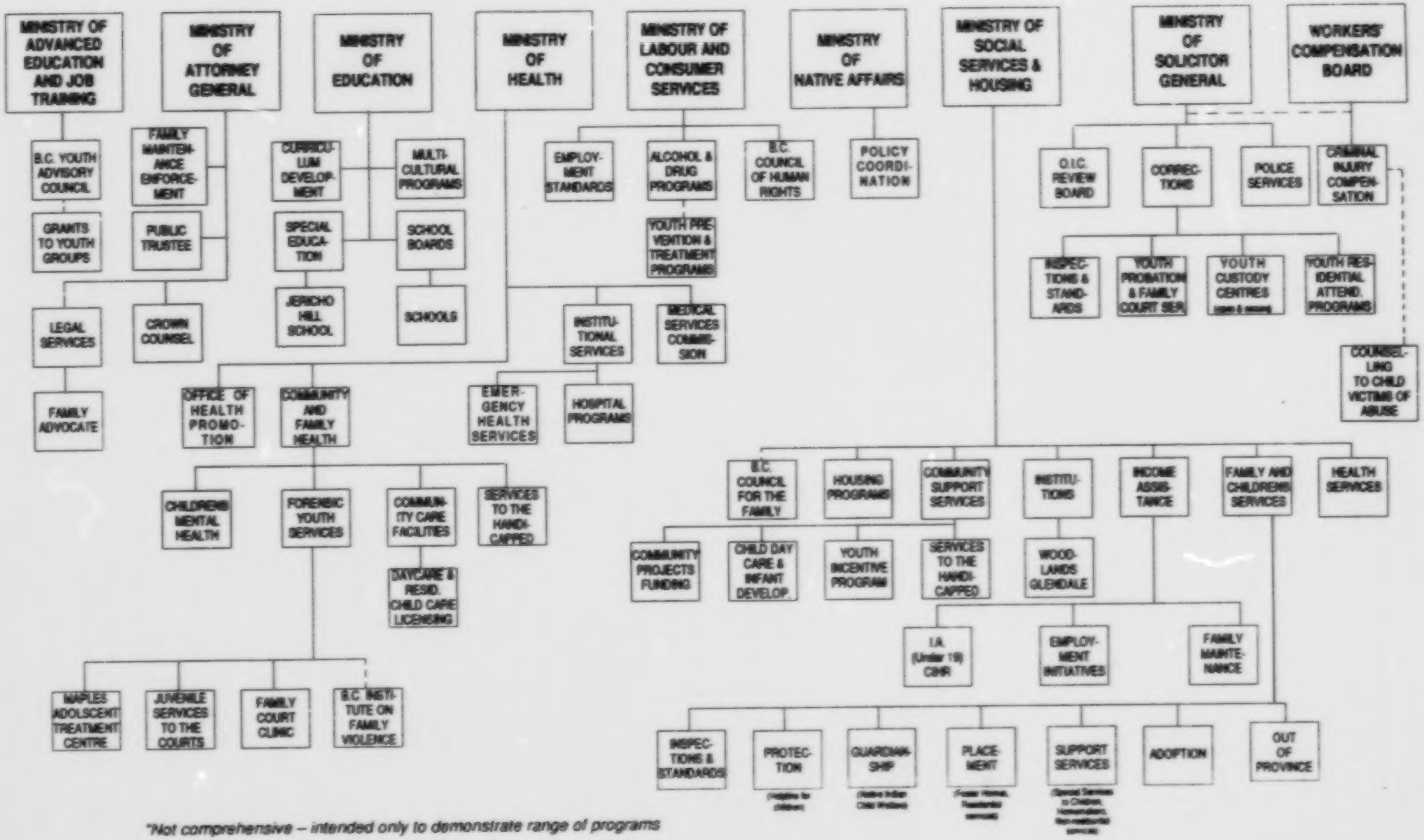
Public Services to Children, Youth and Their Families: The Need for Integration

Public Report No. 22 identified the pressing need for integration of public services provided by at least nine different authorities to children, youth and their families in B.C. The report detailed the findings of an investigation of an incident at the Eagle Rock Youth Ranch where, in February 1989, a 15-year-old ward of the Ministry of Social Services and Housing died in a fire set by two other youth residents. Serious problems of co-ordination were found to exist among social services, youth corrections and licensing officials. This finding reinforced long-standing Ombudsman concerns arising from patterns previously noted in this office's investigation of approximately 2,000 cases per year.

The complexity of this public service sector is reflected in the organizational chart on page 41 (reproduced from page 18 of Public Report No. 22). This chart identifies the major child, youth and family programs in B.C. and the authorities delivering these programs. Tens of thousands of children, youth and their families each year require special services because of interrelated problems such as: child abuse and neglect; family violence; family dysfunction; mental, emotional and behavioural disorders; physical, developmental and learning disabilities; juvenile delinquency; alcohol and drug abuse; and parental disputes about child custody, access and maintenance.

Major Child, Youth & Family Programs in B.C. by Administrative Authority*

(Dotted line indicates funding relationship)


MINISTRY OF ADVANCED EDUCATION AND JOB TRAINING
B.C. YOUTH ADVISORY COUNCIL
GRANTS TO YOUTH GROUPS
MINISTRY OF ATTORNEY GENERAL
FAMILY MAINTENANCE ENFORCEMENT
PUBLIC TRUSTEE
LEGAL SERVICES
FAMILY ADVOCATE
CROWN COUNSEL
MINISTRY OF EDUCATION
CURRICULUM DEVELOPMENT
MULTICULTURAL PROGRAMS
SPECIAL EDUCATION
SCHOOL BOARDS
JERICHO HILL SCHOOL
SCHOOLS
MINISTRY OF HEALTH
OFFICE OF HEALTH PROMOTION
COMMUNITY AND FAMILY HEALTH
CHILDRENS MENTAL HEALTH
FORENSIC YOUTH SERVICES
MAPLES ADOLSCENT TREATMENT CENTRE
JUVENILE SERVICES TO THE COURTS
FAMILY COURT CLINIC
B.C. INSTITUTE ON FAMILY VIOLENCE
COMMUNITY CARE FACILITIES
DAYCARE & RESID. CHILD CARE LICENSING
SERVICES TO THE HANDICAPPED
INSTITUTIONAL SERVICES
EMERGENCY HEALTH SERVICES
HOSPITAL PROGRAMS
MEDICAL SERVICES COMMISSION
MINISTRY OF LABOUR AND CONSUMER SERVICES
EMPLOYMENT STANDARDS
ALCOHOL & DRUG PROGRAMS
YOUTH PREVENTION & TREATMENT PROGRAMS
B.C. COUNCIL OF HUMAN RIGHTS
MINISTRY OF NATIVE AFFAIRS
POLICY COORDINATION
MINISTRY OF SOCIAL SERVICES & HOUSING
B.C. COUNCIL FOR THE FAMILY
HOUSING PROGRAMS
COMMUNITY SUPPORT SERVICES
COMMUNITY PROJECTS FUNDING
CHILD DAY CARE & INFANT DEVELOP.
YOUTH INCENTIVE PROGRAM
SERVICES TO THE HANDICAPPED
INSTITUTIONS
WOODLANDS GLENDALE
INCOME ASSISTANCE
I.A. (Under 19) CIHR
EMPLOYMENT INITIATIVES
FAMILY MAINTENANCE
FAMILY AND CHILDRENS SERVICES
INSPECTIONS & STANDARDS
PROTECTION
(Helpline for children)
GUARDIANSHIP
(Native Indian Child Welfare)
PLACEMENT
(Foster Homes, Residential services)
SUPPORT SERVICES
(Special Services to Children, homemakers, non-residential services)
ADOPTION
OUT OF PROVINCE
HEALTH SERVICES
MINISTRY OF SOLICITOR GENERAL
O.I.C. REVIEW BOARD
CORRECTIONS
INSPECTIONS & STANDARDS
YOUTH PROBATION & FAMILY COURT SER.
YOUTH CUSTODY CENTRES
(open & secure)
YOUTH RESIDENTIAL ATTEND. PROGRAMS
POLICE SERVICES
CRIMINAL INJURY COMPENSATION
WORKERS' COMPENSATION BOARD
COUNSELLING TO CHILD VICTIMS OF ABUSE

*Not comprehensive – intended only to demonstrate range of programs

Under the Canadian constitution, the burden of service provision is carried primarily by the provinces, which rely on cost-sharing arrangements with the federal government for some services. Current disputes about federal-provincial cost-sharing must be resolved if adequate and effective services for children and youth are to be established and maintained. Following the World Summit on Children at the United Nations on September 29 and 30, 1990, Canada's Prime Minister, co-chair of the Summit, announced the appointment of a federal minister responsible for children. A federal Children's Bureau has subsequently been appointed under the leadership of a former Executive Director of the Canadian Council on Children and Youth and advisor to the Prime Minister. The purpose of the Bureau is threefold: (1) to ensure co-ordination and consistency of government action concerning children; (2) to develop recommendations for cabinet to follow up on the Declaration and Plan of Action signed on behalf of Canada at the September 1990 World Summit on Children; and (3) to monitor the ratification of the U.N. Convention on the Rights of the Child. These federal initiatives will be guided by the U.N. Convention on the Rights of the Child, which will act as a barometer of change and a tool for child advocates in this province and country.

Many native communities wish to assume complete responsibility for the provision of child, youth and family services, and this process has begun with agreements between the Ministry of Social Services and Housing and four native bands.

Extensive and constructive consultations between the Ombudsman's office, key individuals representing consumer, community and professional concerns and interests, and the Deputy Ministers' and Assistant Deputy Ministers' Committees on Social Policy preceded the release of Public Report No. 22. The consultation process led this office to conclude that consensus exists about serious problems of fragmentation in this public service sector. The complexity of these problems requires the immediate attention of government and close collaboration with local communities, where services are best delivered.

On November 9, 1990, the chairman of the Cabinet Committee on Social Policy and Minister of Social Services and Housing subsequently announced the establishment of the Child and Youth Secretariat, which will make recommendations to the Cabinet Committee on Social Policy to ensure that adequate services are provided in an integrated and accountable manner. The Secretariat comprises Assistant Deputy Ministers and four senior staff from the Ministries of Education, Health, Labour and Consumer Services, Social Services and Housing, and Solicitor General.

The following summary of Ombudsman recommendations will be addressed by the Secretariat during the two-year period following the release of Public Report No. 22. The Ombudsman will report publicly on progress made during the 1992-93 reporting period.

Summary of Ombudsman recommendations and government responses to date

A. *Organization, planning and integration of a provincially driven, locally delivered child, youth and family service system (Recommendations 1, 2, 3 and 4)*

These recommendations identify the need for integrated approaches in government to policy development and planning in the child, youth and family service sector with a special focus on the need to:

1. Establish a single authority in government with a formal mandate, executive powers and an adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration. (Recommendation 1)
2. Establish an effective child-centred information and data base necessary for integrated planning and useful for com-

munities, policy makers, funders, researchers and service providers. (Recommendation 2)

3. Promote improved multi-disciplinary integration in the child, youth and family service field to (a) ensure easier access to services, (b) reduce the need for multiple assessments, (c) improve case management practices, (d) ensure appropriate regulation of child, youth and family counsellors and therapists in private practice, (e) encourage multi-disciplinary approaches to education, research and staff development in this field, and (f) more effectively use child psychiatrists and psychologists as diagnosticians, consultants, researchers and trainers. (Recommendation 3)
4. Undertake a comprehensive review of the child, youth and family service delivery system to be completed within two years in consultation with communities, consumers and service providers. The need for preventive family support programs was emphasized within a planned and integrated continuum of services with formal and effective links established between government and communities. (Recommendation 4)

Public responses received by the Ombudsman concerning Public Report No. 22 have been largely positive and reinforce this office's belief that major systemic improvements are necessary in the child, youth and family service sector if the goal of integration is to be achieved. Long-standing public debate is evident in this field about how best to organize a provincially driven, locally delivered child, youth and family service delivery system. This office has noted the comments of many respected experts in the field who have suggested the need for a single provincial agency responsible for major child, youth and family services. Effective and formal local mechanisms with appropriate authority and resources are required to deliver services at the community level. Options most appropriate in B.C. will be carefully considered by the Secretariat during 1991-92 with recommendations going to the Cabinet Committee on Social Policy. Government has agreed that an open and consultative process with communities is required and will act to enhance the quality of planned reforms.

Effective January 16, 1991, the Secretariat Chairperson and Assistant Deputy Minister in the Ministry of Social Services and Housing circulated a document entitled "Child and Youth Services: Integrated Approaches". This document profiled the background of the members of the Secretariat, affirmed the key role of the local and regional Interministerial Children's Committees (now renamed Child and Youth Committees, or CYCs), affirmed the critical importance of community involvement and set out the Secretariat's role in defining and supporting CYCs and reviewing issues discussed in Public Report No. 22. The Secretariat has established communication links with regional and local CYCs and is in the process of defining the most appropriate ways to ensure community participation in the review and planning process. Specific responsibilities of the Secretariat have been defined by them to include: establishing effective provincial co-ordination of programs and services; implementing of interministry policy, protocol, and program initiatives; reviewing issues related to children and youth, including recommendations of the Ombudsman's Public Report No. 22; enhancing government/community relationships; improving case management practices and developing a case management handbook; and receiving written annual reports from local and regional CYCs.

Solutions to the vexing problems of rationalizing cross-Ministry boundaries to guide the work of local and regional CYCs are, we understand, imminent. This is a major organizational challenge given the geographic diversity of the province and the number of different Ministries involved in service provision.

B. *Standards setting, monitoring and enforcement through regulation and improved contracting practices (Recommendations 5 to 12)*

These recommendations identify the need for comprehensive review of current approaches to standard setting through licensing and contract practices in B.C. The need to strengthen contracting practices in government has been identified through Public Report No. 22 and other Ombudsman public reports. The statutory framework establishing standards in the child, youth and family service sector is dispersed among several pieces of legislation, is not consistently understood or applied across Ministries, and is inadequately defined in, for example, the *Family and Child Service Act* (see page 26 of this report for a discussion of this Act, which is currently under review by the Ministry of Social Services and Housing).

Licensing provisions in the *Community Care Facility Act* and Child Care Regulations are primarily concerned with the establishment, monitoring and enforcement of standards in adult facilities and child day care. Residential child and youth care programs and youth day programs are not adequately addressed. Furthermore, licensing provisions are facility-focused, intended primarily for institutional settings and are not sensitive to the current trend towards alternative family care. Confusion exists about which residential programs should be licensed (for example a five-bed MSSH foster home may be exempt while a three-bed staffed group home may require a licence).

The vulnerability of children and youth who are placed out of their home in state operated, funded and regulated resources - regardless of size or type - is similar. Comprehensive regulation of residential and day programs for children and youth with special needs through some form of certification or licensing process is required. The foundations of this process may exist in comprehensive standards being developed for residential programs funded by the Ministry of Social Services and Housing, which could serve as a springboard to a more integrated and comprehensive cross-government approach to standard setting, monitoring and enforcement in all child and youth programs. This office's suggestion that separate regulations are required for residential and day programs for children and youth is under consideration as part of the Ministry of Health's review of the *Community Care Facility Act* and Child Care Regulations. The Child and Youth Secretariat will provide a forum for cross-Ministry deliberations about standard setting and ensure an integrated approach to legislative review processes affecting children, youth and their families.

The great majority of residential and day programs for children and youth with special needs are provided through contracts between various ministries and community groups and individuals. Contracts are a vehicle through which specific Ministry expectations can be spelled out and methods through which services are monitored and evaluated. Common contract procedures are required across all Ministries and the Secretariat will, as one of their major projects, review contract procedures. A regulatory framework can act to guide the contract review process.

The effectiveness of residential and day program interventions with special needs children and youth is largely dependent upon the availability of special education services. Protocols for the provision of education services to children and youth placed in contracted residential programs do not currently exist. Through the Secretariat, appropriate protocols will be developed.

C. *Rights and special measures to protect vulnerable children and youth (Recommendations 13 to 15)*

This office's Public Reports No. 22 and 24 suggest that this is an opportune time for government to consider consolidating child, youth and family legislation in B.C. Public Report No. 22 recommends that existing legislation, regulations and policies establishing the rights of special needs children, youth and their families be consolidated into a Provincial Statement of Principles that is consistent with the provisions of the Canadian Charter of Rights and Freedoms and the U.N. Convention on the Rights of the Child. This statement will be developed through the Child and Youth Secretariat.

This office also suggested the need to strengthen existing protection for children who are at risk of being abused. The need for some form of registry of child abusers was suggested by us as worthy of careful review by government, with special attention being paid to experiences in Manitoba and other jurisdictions which operate statute-based registry systems, which also provide due process and confidentiality protections to those named in them.

Among the most vulnerable people are those who are placed in institutions. Until recently, youths who have not been sentenced by a court or certified pursuant to the provisions of the *Mental Health Act* did not have access to an appeal process for review of their placement in a mental health institution. Public Report No. 22 noted that two important amendments were made in October 1990 providing access to Review Panels and periodic compulsory re-examinations for "informal patients" under the age of 16. Implementation of these changes is proceeding at the Maples Adolescent Treatment Centre in Burnaby but has not yet been achieved at Jack Ledger House, a facility funded by the Ministry of Health. This office is currently inquiring about the reasons for this delay.

D. *Internal and external administrative review and advocacy*

When concerns exist about the treatment of a child by public officials, each Ministry must ensure the existence of an easily accessible and fair internal administrative review process. The child's perspective must be fairly heard and considered, sometimes through independent representation, prior to important decisions being made. Each Ministry has agreed to review current approaches and ensure the existence of explicitly defined and clearly communicated written administrative review procedures that comply with principles of administrative fairness. Senior officials in the respective Ministries have stated that there will be no reprisals against persons lodging a complaint on behalf of a child and that this assurance will be routinely communicated to parents, contractors and public servants who are concerned, above all, about the best interests of the child.

During the consultations with the Deputy Ministers' and Assistant Deputy Ministers' Committees on Social Policy, we suggested the need to strengthen current approaches to administrative advocacy and to provide access to an independent appeal process in cases of fundamental disagreements about the best interests of a child. In order to thrive, child advocacy must be viewed as an essential and healthy feature of the child welfare and related fields. To be effective, it must be encouraged by government ministries and contract agencies and be carried out in an appropriate and reasoned manner. The role of an advocacy office is often one of empowering youth, parents, caregivers, professionals and other natural advocates to represent concerns about a child through appropriate review mechanisms and to monitor these mechanisms for their fairness. "Administrative advocacy" is the term used to describe the process of ensuring the right of the child to be fairly heard and appropriately represented when important administrative decisions are being made that affect him or her.

Rather than establish a separate office of child advocacy in the executive branch of government and a new external appeal mechanism to respond to children's issues, the Deputy Ministers' Committee on Social Policy suggested that these functions form part of an enhanced role of the Deputy Ombudsman's office. This office has agreed to assume this enhanced role and will closely monitor and evaluate the effectiveness and appropriateness of this expanded role during the two-year review period. Interested groups and individuals are invited to contact us with comments and suggestions about the advocacy and external review functions.

Matters relating to external appeal mechanisms in the child, youth and family services sector will also be reviewed as part of this office's follow-up to Public Report No. 24 concerning the Ministry of Social Services and Housing review of the *Family and Child Service Act*. To be effective, external review and appeal mechanisms in this sector must be, under the current organizational structure, cross-Ministry in scope. As suggested in Public Report No. 22, to be consistent with the family support policies of government, appeal mechanisms should also include access to appeal for families who are refused social services (such as those defined in the *Guaranteed Available Income for Need Act*).

Principles of administrative fairness for children and youth were outlined in Public Report No. 22 and will be refined and periodically updated through the experiences of this office and our continuing consultations with government officials, service providers and consumers. These principles are reproduced below.

Principles of administrative fairness for children and youth

Elements of a fair, responsive and accountable administrative service delivery systems for special needs children and youth should include:

1. A clear and consistent foundation of policy and practice linked to legislation and regulations so that the lawful authority for decisions or recommendations affecting special needs children, youth and their families is apparent to all and clearly defined administrative accountability within government is ensured.
2. Structured and objective child-centred criteria defining discretionary limits and objectives to ensure that similar situations are treated consistently and different situations are treated individually when professionals, public servants and contract personnel are required to exercise judgement in their work with special needs children, youth and their families.
3. Codes of service - established through professional codes of ethics, job descriptions, policies and service contracts - which emphasize the fundamental responsibility of professionals, public servants and contract personnel to ensure fairness to each individual special needs child, youth and family. Appropriate and objective standards need to be set governing the professional skills and training required to operate at the different levels of service delivery, and establishing reasonable workloads so that statutory and administrative policy requirements can be properly carried out.
4. An open, sensitive and responsive organizational atmosphere and a management style that emphasizes the child-centred nature of the work, its intrusive potential, and the complex, diverse and often stressful multi-disciplinary environment within which the work takes place.
5. An organizational structure which recognizes the need to plan, organize, monitor and evaluate a planned, integrated multi-disciplinary continuum of services to children, youth and families through formal links among
   a) the provincial government, with its concerns for provincial planning and priority setting, equitable resource allocation, and monitoring the consistent and fair application of its policies;
   b) local communities - including municipalities, regional districts and non-governmental organizations - with their concerns for effective local planning, priorization and service coordination of preventive and statutory services to special needs children, youth and families, and
   c) stakeholders in the service delivery system, including children, youth and

their families, advocates, volunteers, contractors, and service providers.

6. A unified set of principles, preferably established in a consolidated piece of legislation, governing the operation of all government operated, funded or regulated services to special needs children, youth and their families. These principles should include the need to
   a) promote the best interests, protection and well-being of children and youth;
   b) recognize that parents often need help in caring for special needs children and ensure that necessary services are provided in a manner which respects the integrity of the family and, wherever possible, on the basis of mutual consent;
   c) use the least restrictive and intrusive intervention that is available and appropriate to assist special needs children, youth and their families as close as possible to their home communities;
   d) recognize the need of children and youth for continuity of care and stable relationships that are sensitive to individual gender, cultural, religious, socio-economic, physical, psychological, intellectual, social and developmental differences;
   e) ensure that children and youth are afforded the opportunity to be heard and to be independently represented when important decisions affecting their interests are made and when concerns arise about the appropriateness of the services being offered or provided. Decisions affecting the interests and rights of children, youth and their families must be made according to clear, consistent criteria established in consideration of assessed service need, in compliance with principles of administrative fairness, and where applicable, the need for legal due process.
7. A common mechanism for gathering and analyzing appropriate information that is necessary for
   a) individual case planning and tracking;
   b) policy, program and service planning and priority setting;
   c) financial accounting and funding analysis, and research;

   and which balances the need for client privacy with the need for appropriate access to information. Clients should have the right to review their individual records with the onus being on an authority to show cause if access is to be restricted.
8. Expeditious communication of all rights, policies, practices and decision-making criteria in language that is understandable to children and youth.
9. In accordance with 6(e), explicitly defined, easy to use complaint resolution mechanisms that
   a) encourage a child and youth-centred approach to consensual dispute resolution through effective interdisciplinary case management practice;
   b) provide procedurally fair, internal administrative review mechanisms when complaints arise;
   c) provide a statute-based external review or appeal mechanism when disagreements arise about major decisions which affect the fundamental rights of life, liberty, livelihood, shelter, health, sustenance and security of the special needs child or youth;
   d) provide assurances that no adverse effects will result from a complaint made in good faith by, or on behalf of, a child or youth; and
   e) ensure the right of the child or youth to be heard and the availability of an advocate when important decisions are being made that affect the child, youth and, where applicable, his or her family.

Environment Youth Corps

Public Report No. 22 noted that eight provincial Ministries are involved in the provision of services to children and youth in British Columbia. It was later brought to our attention that we had overlooked an innovative program recently initiated by a ninth Ministry - Environment.

The Environment Youth Corps was established in 1989 as a training and employment program for young people 16 to 24 years of age. The objective is to increase the future employment prospects for young people while accomplishing important environmental improvement projects. To date, over 2,000 young people have participated in the program, completing about 350 projects in communities throughout British Columbia.

The Ministries of Environment and Social Services and Housing fund the program. The Environment Youth Corps provides the payroll, administration and training for young people. Project sponsors supply the ideas, tools and supplies for projects.

Some young people join for an eight-week summer period, while others stay for a full 23 weeks. During this time the young people work on a variety of projects in their local community from enhancing habitat for fish and wildlife, to research and data collection and improving outdoor recreation facilities. Young people spend about 20 percent of their time receiving training. This training includes: specific job skills required to complete their projects to job readiness (job search, employer expectations, etc.); environmental education; and life skills (money management, communication, etc.).

The program has been enthusiastically received by young people, project sponsors, and communities. Many worthwhile projects have been accomplished. Even more important, the Environment Youth Corps experience has resulted in many young people re-examining their personal priorities and life goals. They have built on this experience by moving on to permanent employment or upgrading their schooling.

Part II
Case Summaries

The case summaries included in this section provide a representative sample of the investigations conducted by the Office of the Ombudsman during 1990. The summaries illustrate not only the wide variety of complaints made to us about authorities within and outside our jurisdiction but also the variety of approaches used by our office to provide assistance to complainants. Such assistance ranges from simple referrals to other agencies, in the case of non-jurisdictional complaints, to investigations taking several months or even years to complete.

The majority of investigations we conduct are closed after a phone call or two to officials in government. A few authorities, such as ICBC, have facilitated our investigative process by setting up departments for the sole purpose of handling complaints bought to our attention.

Other investigations require us to set up meetings with government officials and, in some cases, to travel throughout the province to conduct interviews and to review circumstances that we may be unable to assess simply by obtaining written or oral explanations. In addition, we make regular visits to correctional and mental health institutions and to institutions for the developmentally disabled to hear the complaints of individuals who may be reluctant or unable to discuss their concerns by telephone.

As a general rule, authorities are quick to act on suggestions or recommendations made by our office for the resolution of complaints. In some situations we act as mediators, bringing complainants and government officials together for a settlement of a problem that may be more appropriately resolved by discussion and compromise rather than by a finding of fault - or of exemplary conduct - by our office. This is especially true in situations where problems are created by misunderstandings or breakdowns in communication resulting from differing perceptions of rights and responsibilities. The public interest - and the interest of the government that serves the public - is best met by an Ombudsman office that seeks to provide resolutions that are fair and satisfactory to both complainant and government, whether or not any fault is found. This is reflected in the use of the term "resolved" rather than "substantiated" in the statistics that precede the case summaries for each authority and that appear in the tables at the end of this report.

At the beginning of the material on each Ministry in this section is a statistical breakdown of the disposition of all investigations concluded during 1990. The terms used to describe these dispositions are precise in their definition. They are as follows:

RESOLVED: The problem that led to the complaint has been either completely or in large part resolved to the satisfaction of the complainant and of the authority as a result either of actions taken by the authority or of any other change in circumstances.

NOT RESOLVED: Our office has made a suggestion or recommendation for a remedy to the authority against which the complaint has been made, or to the cabinet or legislature, and we have been advised that the remedy will not or cannot be implemented.

ABANDONED: In spite of repeated efforts by our office, the complainant cannot be reached or has not responded to our attempts to establish contact.

WITHDRAWN: The complainant has instructed our office to stop our investigation.

INVESTIGATION NOT AUTHORIZED: The matter complained of is not within our jurisdiction for one or more of the following reasons: (1) the agency against which the complaint is made is not an authority listed in the Schedule to the *Ombudsman Act* or is listed in a section of the Schedule that has not yet been proclaimed; (2) the matter complained of is not a matter of administration; (3) the matter complained of does not aggrieve a person; (4) a statutory right of appeal exists and has not been used by the complainant; or (5) the complaint concerns an administrative action by a solicitor to an authority, and is therefore excluded from our jurisdiction under section 11(1)(b) of the *Ombudsman Act*.

NOT SUBSTANTIATED: Our office has found the complainant's allegations to be either unfounded or incapable of being proven.

DECLINED: Although the matter complained of is within our jurisdiction, our office has declined to investigate the complaint for one of the reasons set out in section 13 of the *Ombudsman Act*. For example, we have concluded that adequate available remedies exist that have not been explored by the complainant or that the merits of the complaint can be assessed without conducting an investigation.

DISCONTINUED: An investigation was begun and then discontinued because of one of the reasons set out in section 13 of the *Ombudsman Act*.

INQUIRY: An individual contacted our office not to complain of wrongdoing by a provincial authority but rather to obtain an explanation of a policy, procedure or practice used by an authority or of legislation or regulations.

The entire text of the *Ombudsman Act* is printed in the final pages of this report.

Ministry of Advanced Education, Training and Technology

Resolved	23
Not resolved	1
Abandoned, withdrawn, investigation not authorized	12
Not substantiated	10
Declined, discontinued	13
Inquiries	19
Total number of cases closed	78
Number of cases open December 31, 1990	44

Student loan concerns comprise the majority of complaints about the Ministry of Advanced Education, Training and Technology. Students often contact our office if their loan applications are delayed in processing, if the loan amount is considered insufficient, if the loan has been denied, or if repayment cannot be achieved. The following summaries illustrate specific problems brought to our attention and how we dealt with them.

A student in dire straits

A student called us to say she had desperate financial problems. She had been approved for a student loan and the Ministry had sent out the documents necessary to negotiate funding. Unfortunately, these never reached the student, and she was told a replacement would take up to one month. She could not wait another month for her loan.

We discussed the student's concerns with the Ministry. Students who notify the Ministry of failure to receive mailed documents are required to fill out an affidavit. This is returned to the Ministry by the student and then processed. Due to this student's financial situation, the Ministry agreed that if she hand-delivered the affidavit to the Ministry, they would expedite the replacement cheque.

Applicant alleges discrimination

A woman who had been denied entry into a college Early Childhood Education Program complained to our office. She believed that she was being unfairly discriminated against because of a psychiatric disability.

Our investigation showed that while the complainant's application to enter the program in September 1990 had been unsuccessful, the college had set out certain conditions which, if met, would make her eligible for consideration for entry at a later date. The college had medical information from the complainant and her physicians which strongly suggested she would not complete the course at this time because of her disability.

We concluded that the conditions were reasonable and that the college had not acted unfairly. It is not unreasonable for colleges to choose candidates for their programs whom they believe are best suited for the work and most likely to complete courses successfully.

Examination mix-up

A person complained that because of a mix-up at the Ministry, he had been not been permitted to write the Heavy-Duty Mechanical Repair Exam, which he felt appropriate to his past training. Instead, he wrote the Automotive Mechanical Repair Exam and failed.

A Branch Manager reviewed the applicable files and reported to us that the complainant had originally expressed interest in two trades: automotive mechanical repair and heavy-duty mechanical repair. On the application form to write an exam, the complainant had left blank the space provided to indicate which exam an applicant is interested in. Since his formal certification in the United Kingdom had been in automotive repair, Branch staff had assumed the complainant would want to write the Automotive Repair test. Because of the nature of his complaint, the Branch made the necessary arrangements for the complainant to write the heavy-duty mechanical repair exam on an expedited basis.

Medical assessment necessitates job change

The complainant had been employed as a truck driver until three years previously, when he had had to undergo brain surgery. After the surgery, he had been diagnosed by a specialist as having a neuro-psychological impairment. Consequently he required a change in employment, and enrolled in a Branch-sponsored training program. He told us he was unhappy with the types of courses offered by the Branch. He also mentioned that he wanted a second neuro-psychological assessment, as he disagreed with the findings of the earlier one.

On being notified of the complainant's problems, the Branch was able to resolve the situation to his satisfaction. The man was scheduled to complete his Grade 12 upgrading courses. Once he completed these, he was told, he could obtain another neuro-psychological assessment from a specialist of his choice. Once the results of the assessment were known, the Branch would discuss further training plans with the complainant. He was assured that, if at all possible, his choices of courses would be approved.

No nudes is good nudes

A televised program about art on the Knowledge Network used nude models. A woman who believed nude models should not be used on television programs and who wanted the program removed contacted the Minister but was not satisfied with his response. She then contacted our office.

We contacted the Ministry and obtained a copy of the response sent to the woman. The letter explained why nude models were used in the art course; it also pointed out that while the models were nude, the poses were as discreet and tasteful as possible. The complainant was also given the name of the director of the program and encouraged to contact him to discuss further concerns.

We felt that the Ministry had responded appropriately. We encouraged the woman to contact the course director to discuss possible alternatives to live models.

Ministry of Agriculture and Fisheries

Resolved	4
Not resolved	-
Abandoned, withdrawn, investigation not authorised	1
Not substantiated	6
Declined, discontinued	4
Inquiries	1
Total number of cases closed	16
Number of cases open December 31, 1990	20

The proliferation of "bee cases" handled by the Ministry in 1990 serves as a useful illustration of one of the more challenging aspects of industry regulation: how can a policy be drafted which will serve and protect a vulnerable agricultural pursuit, when what is beneficial for one group in the industry may be harmful for another? The principles relating to the consensual - that is, by agreement among parties - resolution of disputes were outlined in Public Report No. 15, which addressed the challenges of managing coastal resources in B.C., and in the 1988 Annual Report of this office.

As is noted in one of the case summaries which follows, the Ministry invited this office to assist in the design of a process for industry consultation which would provide for the reconciliation of opposing interests within the apiculture (bee) industry. This office was pleased to accept the invitation, but withdrew a number of months later when it became apparent that the apiculture supervisor for the Ministry was achieving success in reaching consensus. This consensus was obtained due to the supervisor's demonstrated knowledge of the subject and willingness to listen and incorporate ideas from industry members into the development of management solutions which were both imaginative and practical. Examples such as this are useful reminders of what can be achieved when government takes a leadership role in bringing all interested parties to the negotiating table, in a diligent search for management systems which will minimize the negative impact on each interest, while preserving that which is of benefit. So-called "win-win" solutions are indeed possible.

Bees I: The killer mites

In March 1990 a beekeeper brought to our attention a range of concerns, principal among them being an allegation that the Crop Protection Branch had been unfair and unreasonable in restricting his freedom to move hives between southern Alberta and Osoyoos for wintering purposes. He also considered that the policy administered pursuant to the *Bee Act* imposed unreasonable restrictions on apiculturists as to the conditions that had to be met before movement of bee colonies would be allowed. In addition, he alleged that the local apiculture inspector, who was also a part-time professional beekeeper, was involved in a conflict of interest between his personal ambitions and his professional responsibilities as an inspector. The complainant was also angry that an internal Ministry memo included what he considered to be inflammatory innuendo about his personal life.

Upon investigation, we were unable to substantiate the complainant's concerns. Our office had been involved with the Ministry with respect to apiculture policy issues for some months prior to the complainant's contact with us. The Ministry had requested our assistance in designing a process for consultation with industry which, the Ministry hoped, would result in a consensus from which policy recommendations could be made which would enjoy the support of most members of the beekeeping industry.

The catalyst for this initiative had been controversy in the industry regarding the Ministry's policy of depopulation in order to deal with a microscopic pest which threatened the continued viability of the beekeeping industry. The pest is known as the honeybee tracheal mite. As the name would suggest, it is a parasite which grows and multiplies within the trachea of the honeybee, eventually blocking the trachea to the extent that oxygen passages are diminished and the bee's lifespan is dramatically shortened.

The mechanism for mite transfer between regions appears primarily to be a result of what is known as "migratory beekeeping". Beekeepers in a number of areas routinely move their colonies by way of tractor-trailer units for several purposes: to move the colonies to an area where forage would provide the best quantity and quality of honey production; to move the colonies to a warmer climate for overwintering; or to locate the colonies in a specific area as part of a pollination contract. In the latter case, the bees perform a service vital to the tree, fruit and berry industry; rather than leave pollination to chance and risk devastatingly poor fruit production, orchardists and berry producers almost without exception hire beekeepers to provide "nature's little helper" on a contract basis. The contribution of beekeepers to the gross revenue of the fruit industry in British Columbia has been estimated at greater than $25 million per year.

The controversial aspect of migratory beekeeping has, of course, been the potential for mite transfer not only between regions but also between provinces when prairie beekeepers bring their colonies to the southern Okanagan for wintering.

In addition to pollination and honey production, there is a small but significant business within the beekeeping industry of bee-breeding, which meets the needs of beekeepers to replace bee stocks lost due to disease, the effects of wintering, aging of the colonies, and other factors. The opinion of beekeepers in the central Okanagan and on Vancouver Island has been that strict controls on movement are necessary to protect the bee-breeding industry against introduction of the mite, as the national and international reputation of these areas for producing "clean bees" is vital to their continued prosperity. Migratory beekeepers, on the other hand, argue that free movement of their colonies is essential to *their* continued prosperity. Within this environment of legitimate disagreement, the Ministry of Agriculture and Fisheries has attempted to create policies that will support the industry on a regional basis without imposing crippling restrictions.

It was within this context that we reviewed the complainant's concerns and found that the conduct of the Crop Protection Branch toward the complainant had been both reasonable and lenient. In addition, it was noted that the relatively high profile position in the beekeeping community of the apiculture inspector created a situation in which, had he attempted to use his position for personal gain, such as the preferential acquisition of pollination contracts, competing beekeepers would have cried foul. There was no history of such complaints from the beekeeping community and no evidence to substantiate the complainant's concern of conflict of interest, although the potential, as with all positions of this nature, undoubtedly exists.

As for the allegations of personal innuendo, we noted that an internal memo made reference to the complainant's relationship with another person by speculating whether the complainant would be moving elsewhere, and presumably moving his bee colonies as well. While the tone of the memo may not have been as respectful as the complainant would have liked, the memo was intended to be confidential, internal correspondence created as part of legitimate administration of policy under the *Bee Act*, for which this office felt any criticism to be unwarranted. Given the complainant's apparent history of noncompliance with legitimate regulations and reasonable requests made pursuant to impartial administration of policy, we were unable to substantiate the complainant's concerns and the file was closed.

Bees II: The sampling methodology debate

A migratory beekeeper complained that

the statistical sampling program established by the Ministry of Agriculture and Fisheries to test for the presence of honeybee tracheal mites was inherently defective. A former statistician, the beekeeper had assembled convincing statistical evidence to establish that the sample size as determined by provincial policy was hopelessly inadequate to provide anything approaching a reasonable confidence level when determining the presence of the mite at various levels of infestation.

After consultation with the Ministry and with the Department of Mathematics and Statistics at the University of Victoria, we were unable to substantiate the complainant's concern. Provincial policy required four bees per colony to be removed and dissected to test for the presence of the mite, and each yard or operation (a discrete collection of hives at a particular location) was to be treated as one population. Once the samples from all hives were added together, the total sample would never be less than 100 and for large apiaries could run as high as 1,600, which, by the complainant's own calculations, would be a sample size adequate to detect a low level of infestation with a high probability of detection (the confidence level).

As noted in the previous summary, the policy of tracheal mite control in the province has been controversial; it thus came as no surprise to us when an individual well versed in statistical sampling expressed his concern, especially when a positive test could result in the destruction of his colonies with a resulting loss of his ability to earn a livelihood.

Bees III: Torched

The complainant lived in the south Okanagan area and kept a number of bee colonies on his property. This fact came to the attention of the local apiary inspector who was employed part-time by the Ministry of Agriculture and Fisheries. The experience of the apiary inspector was not gained simply through employment with the Ministry; he also kept a number of his own hives. The inspector visited the complainant's property and advised the complainant that under the *Bee Act*, every apiary and beekeeper must be registered with the Ministry. The primary intent of the *Bee Act* is to prevent the transmission of bee diseases for the protection of the apiculture industry as a whole. The inspector found the complainant's beekeeping equipment to be in markedly substandard condition, but felt that a number of the bees themselves could be salvaged for productive use elsewhere.

The inspector explained to the complainant that a destruction order under the *Bee Act* would be necessary to deal with the old beekeeping equipment, but also made a barter offer to the complainant to exchange the complainant's viable bees for a quantity of honey produced by the inspector's bee colonies. A tentative deal was reached which later fell through. As the inspection was made in July of 1989, no destruction - which is usually accomplished by fire - was carried out due to the risks involved in using fire in a hot dry season.

The inspector had no further dealings with the complainant until the inspector attended at the complainant's property in February 1990 to carry out the destruction. The complainant was not at home and the inspector therefore contacted the next-door neighbour to advise of the destruction activity under the *Bee Act* which would be carried out that day. The hives were destroyed by fire, leaving an unsightly mess.

The complainant expressed his concerns to this office that the conduct of the inspector had been reprehensible and the destruction of hives had caught him completely off guard.

This office found the complainant's concerns to be substantiated, but noted also that the Ministry had been made aware of the matter and had dealt directly with the inspector. In making a barter offer to acquire bees, while at the same time exercising the authority to destroy hives under the *Bee Act*, the inspector was in a highly visible conflict-of-interest position. As a public servant administering the *Bee Act* in the public interest, the inspector was in a position where even the appearance of a possibility of conflict must be carefully avoided. In addition, the delay between initial dealings with the complainant and ultimate carrying out of the destruction order was unacceptable, as was the lack of notice to the unregistered beekeeper. The Ministry also made this element of fair administration clear to the inspector. Because the destruction of the bee colonies was carried out under the authority of the *Bee Act* for a purpose consistent with the intent of the Act, and because the Ministry had identified the administrative problems associated with the inspector's conduct, we considered the matter resolved and advised the complainant accordingly.

Hail wipes out uninsured berries

The owners of a berry farm in the Fraser Valley sustained a devastating crop loss from hail in August of 1989. The hail, though dense and violent, was confined to a relatively small area which did not seem to exceed to a great extent the boundaries of the complainants' farm land. Having made application for and having been denied crop insurance compensation, the berry producers complained to this office.

Upon investigation, this office was unable to substantiate the complainants' concern. Unfortunately, the complainants' berries were on newly established plants, planted in the spring of 1989. Under the continuous crop insurance contract, coverage does not begin until November 1, continuing for one year after that date. If the complainants' plants had been established as at November 1 of 1988, coverage could have commenced and continued through 1989. The insurance contract requires that plants be established, with trellising as necessary to support the plants by the beginning of the insurance crop year on November 1. No discretion exists with the Ministry to vary these requirements; they are the same for all farmers of particular crops.

Although the complainants had previously participated in the crop insurance program, that alone was insufficient to generate the coverage required to qualify for compensation in this unfortunate instance. In addition, the crop insurance program offers no provision for individual disaster relief. The complainants' situation was indeed unfortunate but could not be considered to be the fault of provincial administration.

Fowl air

The complainant, prior to his retirement, ran a chicken farm in the Fraser Valley. He then sold the farm, retaining a portion of the land with a residence as his retirement property. The subsequent owner of the chicken farm expanded the operation, then in turn sold the farm to another operator who carried out further expansion activities which included the installation of five powerful ventilation fans in the barn located 50 feet from the complainant's property line.

The complainant sought the assistance of this office when the odour problem from the chicken farm became intolerable. The complainant had sought assistance from the Ministries of Environment (Waste Management Branch) and Agriculture and Fisheries, to no avail. At present, farm odours are unregulated under the *Waste Management Act*, the only remedy being possibly provided by a court in a suit brought under the common law of nuisance.

The complainant was advised that if he wished to follow the legal route he might have only a limited time in which to do so, as the *Agriculture Protection Act*, which received third reading in the provincial legislature in 1989, could be proclaimed at any time. This Act specifically protects farmers from nuisance actions where it is established that the farmer is following reasonable and acceptable husbandry procedures.

The Ministry of Agriculture and Fisheries did offer a measure of assistance by way of referral to a voluntary organization known as the Agricultural Environmental Service (AES). The procedure of the AES is for the facilities of the alleged offending farmer to be examined by AES representatives who themselves carry on the same type of farming, and thus have the expertise to comment on the farmers' methods and procedures. In this case the AES found that the farmer had done all which could reasonably be expected, including the installation of sheet metal ducts to direct the exhaust downward onto a field of tall grass. In addition, the exhaust ports, located close to the ground, were covered with burlap bags to filter dust and other particulate matter.

The complainant's contention was that the stench was so powerful on a year-round basis that he was forced to keep his windows closed, which made living most uncomfortable during the hottest months of the summer. However, given the information obtained about the offending farmer's operation, this office was limited to advising the complainant of his legal remedy; no other provincial assistance was available.

No sale, no subsidy

A grain farmer in the Peace country found himself ineligible to apply for a grain subsidy because he did not have a Canadian Wheat Board Permit Book. He had not applied for one because he had been using the grain as feed for his cattle. He contended that the book was solely to verify acreage, proof of which he could provide by simply submitting a signed affidavit. That being the case, he told us, it was unreasonable for the Ministry to refuse to accept his application for a subsidy.

A review of the federal/provincial agreement on the 1990 Special Income Assistance Program for Grains and Oilseeds revealed that the intent of the agreement was to provide assistance to producers who had suffered significantly reduced income for 1990 - particularly those producers who sell to foreign markets because they have lost income as a result of international subsidies for grain producers. The holding of a Canadian Wheat Board Permit Book is a prerequisite to the sale of grain.

As the intent of the program was clearly to benefit grain producers who sold their product rather than used it for their own purposes, we were unable to substantiate the complaint.

Ministry of Attorney General

Resolved	84
Not resolved	-
Abandoned, withdrawn, investigation not authorized	33
Not substantiated	32
Declined, discontinued	61
Inquiries	35
Total number of cases closed	245
Number of cases open December 31, 1990	63

Court Services

Court Services is the branch of the Ministry of Attorney General responsible for providing court registry services, sheriff services, court reporting and recording services, and court facilities throughout the province.

Although we noted an increase in complaints about Court Services in 1990, the numbers were similar to those registered in 1987 and 1988. The issues that most frequently appeared in complaints during the past year related to payments such as witness fees, bail refunds and ticket payments, and access to correct and complete information.

Before the judge on an empty stomach

A prison inmate complained that Sheriff Services had neglected to give him breakfast. The sheriffs had picked him up in the early morning for a trip to the Vancouver law courts, and as breakfast had not been served at the institution, the complainant presumed the sheriffs would feed him.

We could sympathize with not wanting to face a day in court on an empty stomach. Sheriff Services stated that they were not responsible for providing the breakfast, so we talked to the institution and received an agreement that, in future, a cold breakfast would be served to inmates who had to leave early for court. The inmate was pleased that breakfast would be available next time, even if it wasn't cooked.

Court without a judge

A young man took a day off work for a scheduled court appearance, and lost a day's wages to do so. No one had notified anyone in the family that the trial would not go ahead as scheduled, but when the man showed up at the courthouse he was told that no judge was available. His mother complained to us on his behalf.

When we contacted Court Services, we confirmed that the judge scheduled for court had been unavailable that day. Although the RCMP and Crown counsel had been notified, Court Services were not aware, at the time that the judge's cancellation was announced, that anyone was scheduled to appear that day. When the documents arrived from the police there were only a name and address, but no phone number. The son was not listed in the phonebook, and Court Services were reluctant to phone other people with the same last name in the hope of finding one scheduled to appear in court. It was too late to attempt to notify the person by mail. If the young man had not appeared, a warrant would have been issued for his arrest.

The manager of Court Services agreed to contact the complainant and apologize for the inconvenience. The mother, son and our office considered the matter to be resolved.

The price of enforcing a court order

A successful party in a civil lawsuit complained that it was unfair that he had to prepay fees to the sheriffs before his court order would be enforced. The person believed that Court Services should pay this money and then add it to the total amount to be collected from the debtor.

Although we understood the person's frustration that having "won" in the court case, he had to pay the sheriffs to enforce the order, we could not assist him. The subject of complaint was a matter of legislation, not a matter of administration. Section 8 of the *Sheriffs Act* requires anyone wishing to use the sheriffs to seize property under a court order to prepay the sheriffs' fees. This money is added to the total amount owed by the debtor to the creditor, and must be paid even when creditors cannot recover the total amounts owing.

Tenant departs, eviction unnecessary

A landlord called to complain that although he had a court order to evict a tenant for non-payment of rent, the sheriff would not enforce the writ. The landlord had prepaid all the necessary fees required under the *Sheriffs Act*, but the tenant had not been contacted.

When we contacted the sheriff's office, we were informed that there were two landlords named on the order. The sheriff's office had contacted the other landlord, who had said he did not want the order enforced as he believed the tenant was leaving voluntarily. The sheriff then recontacted the landlord who had originally brought in the writ and asked if some agreement on instructions could be reached. The two landlords agreed to meet with the sheriff and give consistent instructions. As it turned out, both landlords agreed to the eviction, but the tenant left prior to the writ being enforced.

Sheriffs no longer execute writs of possession, as this service was privatized in the fall of 1990.

Jaw broken before arrest

A woman who fractured her jaw while in sheriff cells demanded compensation for the cost of replacing her dentures, which no longer fit. The incident had occurred several months before the woman contacted our office.

After speaking to the sheriff who had been on duty, the police who had brought the woman into custody originally, and the nurse who had visited the woman while she was in the sheriff cells, we concluded that the woman's jaw had been broken prior to her being arrested by the police. She had been taken by the police to a hospital emergency ward, where she was treated and then released to police cells. She was subsequently transferred to the sheriff cells, where the nurse visited her. The nurse's notes clearly indicated the existing fracture and described the steps taken prior to the woman's transfer to the sheriff cells. Although we agreed that poor-fitting dentures would be very miserable, we could not substantiate the request for compensation from Court Services.

Smokers' rights curtailed

A resident of a provincial correctional centre complained that he had been classified as an "escapee" on the security code system used by the Ministry of Solicitor General. He also objected to what seemed an arbitrary decision by certain sheriffs: some sheriffs would allow him to smoke in provincial vehicles and lock-ups, while others would not.

As the RCMP were responsible for this individual being coded as an "escapee," we had no jurisdiction to investigate this aspect of his complaint. Instead, we referred the complainant to the Division Commander of the RCMP for his area. We also informed the complainant that the province would soon be enforcing a province-wide ban on smoking in provincial vehicles and, therefore, the decision of whether or not to allow residents to smoke would no longer be at the discretion of sheriffs.

Policy not loonie

A man who tried to pay a $75 traffic fine with one-dollar coins was told by the court registry cashier that Court Services policy prevented her from accepting more than 10 loonies at a time. The balance of the fine, she said, would have to be paid in bills. The man then contacted our office contending that, if dollar coins were legal tender, then Court Services could not reasonably refuse his payment.

Court Services explained to us the reason for their policy. Before it was in place, there had been frequent occasions on which angry recipients of traffic tickets paid their fines in coins, apparently in an attempt to demonstrate their displeasure and jam the wheels of bureaucracy. The difficulties encountered in processing large amounts of coin led Court Services to establish guidelines on acceptable tender. These guidelines were based on the provisions of the *Federal Currency and Exchange Act* and set the total amount of dollar coins acceptable at one time at 10. While the individual who contacted our office was not happy with the policy, he was satisfied that the policy was being applied in a fair and even-handed manner.

Disputing tickets far from home

The recipient of a traffic ticket told us that the procedure for disputing tickets had several flaws which should be corrected. A resident of the lower mainland, he had received a speeding ticket in a small northern community in December. He immediately went to the provincial court building in an effort to dispute the ticket. The clerk on duty informed him that in order to follow through with the dispute he would have to return to that courthouse on a date in February. Returning from the lower mainland to dispute the ticket nearly two months later was impractical and financially impossible for him.

Procedures for disputing traffic tickets in B.C. are intended to ensure that the parties to a dispute are given the opportunity to provide evidence and make arguments in person before a judge or justice of the peace who decides the case on the basis of this evidence and these arguments. Trials are held at the court nearest to the place where the offence is alleged to have occurred and where there are witnesses. The RCMP officer who issued the ticket is the Crown witness if the ticket is disputed. Because of the costs and time involved, it is impractical for these officers, who are faced with numerous court appearances, to attend court at distant locations. Recent technological advances such as facsimile machines do permit transfer of printed information, but judges are inclined to rely primarily on the evidence of witnesses. Witness demeanour and credibility are important factors for consideration.

At the moment there are two options. An individual can either return to the location where the alleged offence occurred and argue the case or else apply to the nearest Crown counsel office to have the charge waived to a nearby court. The policy on waiver of charges in B.C. states that before a charge can be waived from one region to another, the accused must indicate, to the satisfaction of the Crown counsel in the originating location, a bona fide intention to plead guilty to the charge.

We concluded that the Ministry's position was reasonable. While we appreciated that it is difficult for people to travel many miles for court appearances, it is not fiscally prudent to expect the government to pay for the travel costs of Crown witnesses such as RCMP officers.

Bigger bucks

A B.C. resident who lives close to the U.S. border had only American money in his pocket when he went to a court registry to pay a $50 fine. Told that no exchange would be paid on the U.S. currency, he decided to postpone payment. He then called our office, complaining that it was unfair for the government agency to refuse to pay exchange on the American dollar at a time when it was worth considerably more than its Canadian counterpart.

The policy of the Court Services Branch states that both American and Canadian currencies are acceptable tender in the payment of court fines. As well, the Ministry publishes, from time to time, the exchange rate to be used by staff when in receipt of U.S. funds.

Although no Ministry staff recalled the incident brought to our attention, the Deputy Director told us he wished to apologize on behalf of the Ministry to the complainant. The complainant was also assured that if the policy had not been clear to registry staff prior to his complaint to our office, it was now.

Criminal Justice Branch

Although this office did not investigate complaints about the exercise of Crown discretion in 1990, the Criminal Justice Branch often facilitated resolutions of such complaints by providing our office with explanations regarding decisions to prosecute or not to prosecute. Complaints which were not thus resolved to the complainant's satisfaction were referred to regional Crown counsel for resolution.

Administrative matters such as delay and the Crown's failure to notify or cancel witnesses or to respond to correspondence are examples of issues investigated by our office during the year.

No wage for the witness

A man who had been called as a Crown witness wanted to know if there was any compensation for lost wages. He and three friends had been subpoenaed by the Crown to appear in court in a community many miles from their homes. The Crown had paid for their flights, lodging and meals, but had not reimbursed the men for the days lost from work. In all, each witness missed four days of work.

At the present time there is no legislative authority for the Crown to reimburse witnesses for wages lost. As the Crown is acting on behalf of all citizens when prosecuting a criminal trial, it is believed that it is a civic duty to assist the Crown where possible. We suggested that the caller contact his MLA or the Attorney General if he believed legislation should be introduced to provide for reimbursement for lost wages.

Case unfinished, investigation on hold

We received a complaint that the Deputy Attorney General was taking an unreasonable length of time to respond to a complaint about the conduct of Crown Counsel. The office of the Deputy Attorney General confirmed that the complaint had been received some two months earlier; however, the office had indicated on receiving the complaint that it would not be responding until the outstanding criminal court matter had concluded. The criminal matter had been dealt with by the courts two weeks earlier, and we were informed that the Deputy Attorney General was in the process of addressing the issue. A letter would be sent from his office within the next two weeks.

Given that the criminal matter during which the Crown's conduct came into question had not concluded, our office did not feel that the Deputy Attorney General's decision to delay his investigation until that matter had been completed was unreasonable.

Family Maintenance Enforcement Program

Both creditors and debtors find reason to complain about the Family Maintenance Enforcement Program. Typically, creditors contact our office when there is a delay in enforcing their maintenance order. Several debtors have called to complain that their unemployment insurance benefits were being garnisheed or that the enforcement was unreasonable.

The Ministry of Attorney General implemented the *Family Maintenance Enforcement Act* in September 1988. The enforcement part is carried out under contract by an agency in the private sector. The Attorney General has established a review procedure for complaints (from debtors or creditors) about the enforcement service.

We provide our complainants with the necessary form to bring their concerns to the attention of the Director of the Program. We inform them that as that remedy is available, we will not begin an investigation after that initial contact; however, complainants are advised that if they are not satisfied with the Director's resolution of their complaints, they may bring that concern to our office.

Address revealed, but not by Ministry

A client of the Family Maintenance Enforcement Program called our office because she felt that her address had been obtained by her boyfriend's ex-wife, either from the Program or from the Ministry of Social Services and Housing while the ex-wife was a practicum student in one of the Ministry's offices. In fact, there was proof that the ex-wife had obtained the address before the she began her practicum and before the address had been given to the Program. We advised the caller that there had been no breach of confidentiality.

Land Title Branch

We receive very few complaints about the administration of the Land Title Branch. In part, this likely reflects the quality of communication between the Land Title Branch and the professional groups who are the most frequent users of its services. Individuals using the Land Title Branch without professional assistance may find the process more difficult, but this is not necessarily a reflection on the quality of the branch's administration. Because the Land Title Branch certifies title to land, it must establish very high standards for the quality of the form and content of the documents it processes. Sometimes, unrepresented individuals may not understand the legal basis for these requirements and they may therefore wrongly conclude that the requirements are arbitrary or unfair.

In addressing the complaints we have received, we have been impressed by the prompt and efficient responses from Branch management. For its own program of monitoring service, the Branch has assigned a Registrar to review the quality of service the office provides. However, mistakes do sometimes happen. In one recent case, a widow complained to us that the Branch had erroneously registered ownership of the land to her and her husband as tenants in common, not as joint tenants. Had the title showed them as joint tenants, the land would have been automatically transferred to her upon his death by right of survivorship. As a tenant in common, she would be required to take certain legal steps in order to have the land transferred to her from the estate.

When her husband died, she could not afford a lawyer, so she telephoned the Land Title Office (LTO) for information about the state of title and then prepared the necessary documents to have the land transferred to her. After the documents were filed and probate registry fees were paid, she discovered among her husband's papers some documents indicating that they had applied for registration as joint tenants. She said that she had telephoned the LTO with this information, but the person she spoke to had insisted that the title correctly showed them as tenants in common. She then contacted us.

When we spoke to the Registrar, it appeared that an error had indeed been made some years ago, when the LTO was in the process of computerizing its paper records. A clerk had incorrectly transcribed their ownership of the land. Once the error was identified, the LTO promptly corrected it, and offered the complainant compensation for her costs resulting from the error.

The island that moved

The owner of waterfront properties in the Chilliwack area complained that the Registrar of Land Titles in New Westminster had unfairly placed a caveat against the properties.

Investigation revealed an intriguing tale going back over a century. A survey of the area in 1878 did not note any islands. Another survey was performed in 1892 for a subdivision which created certain large parcels of land, the district lot numbers being those which still form part of the complainant's legal description of his land today. Between 1878 and 1892, the river boundary shifted, with considerable erosion and reshaping of the riverbank occurring. A "township survey" (a system of mapping of land parcels first used on the prairies) conducted in 1915 noted, for the first time, the presence of an island adjacent to the subject properties.

The question which arose, and which caused the Registrar of Land Titles in New Westminster to place a caveat on certain properties due to the uncertainty of title, is whether the island was severed violently from the adjoining upland areas by a cataclysmic event, or whether it was separated by the gradual forces of erosion at work in the Fraser River. The former situation might mean that owners of upland parcels are entitled to legal ownership of portions of the island; if the latter scenario is correct, then the common law would indicate that the property has simply been lost, and the severed portion, which appears to have emerged from the waters of the Fraser through accretion, is and remains Crown property. This latter option is indeed the position of the provincial Crown, which parted with the island by way of a Crown grant of land to a paper company which grows cottonwood trees on that and other islands in the Fraser River.

The complainant argued that a special survey, as provided for in the *Land Title Act*, might settle the question without the necessity of further litigation. However, this office could not fault the position of the Surveyor General and his staff, who held the view that the dispute was not a question of improper surveys, but rather a question of how to interpret physical changes in the land mass between surveys. To that extent, any special survey would be an arbitrary exercise, rather than an exercise in both survey and geohydraulic detective work necessary to unravel the history. To further complicate matters, much of the original upland land mass, as determined by original survey boundaries, is now under water and would appear to vest in the Crown by virtue of the *Land Title Act*.

In the end, it became clear that the dispute which has erupted into litigation among a number of parties, including the Crown, would have to be settled by the courts. The Office of the Ombudsman went to the limit of its jurisdiction to assess whether there were any matters of administration which, if resolved, would remove the necessity for a legal battle. However, we could not fault the refusal to act of the agencies of the Crown involved here. The complainant was so advised and left to seek his judicial remedy.

Public Trustee

The Office of the Public Trustee has three main functions. The first is to administer the financial affairs of people who can no longer do so for themselves. The second is to administer the estates of people who have died intestate - without a valid will. Lastly, the Public Trustee provides various administrative and legal services in its guardianship capacity for people under the age of 19.

In our 1989 Annual Report, we noted the Public Trustee's major reorganization of its office. The reorganization is still not complete, but there have been positive changes in the way staff respond to the complaints we receive. Staff are more responsive and willing to consider alternative approaches to the client's situation. One change which has brought many good results is the practice of trustee officers visiting the client in order to conduct a more thorough assessment of his or her circumstances. Many misconceptions which cannot not be dispelled over the telephone evaporate once a face-to-face meeting is arranged.

In one particularly difficult case, a client called our office repeatedly, for our toll-free line made access to our office easier for her than to the Office of the Public Trustee, which does not have a toll-free line. Although the Public Trustee was administering her affairs appropriately, and the client had received numerous explanations, by telephone and letter, of the Public Trustee's actions, these difficult calls continued until a team went to meet her. We then received one call of thanks, and no further complaints.

People become clients of the Public Trustee through several legal avenues. It is evident that the quality of assessment and communication with the concerned parties before the Public Trustee becomes "committee" has a significant impact on the Public Trustee's ability to manage the file effectively. We continue to receive complaints, both before and after committeeship, that the Public Trustee has heard only one side of the story and is unfairly taking sides in a family dispute. In most of these cases, the client has a family (or friends) who do not agree with the need for the Public Trustee's involvement or with the administrative steps the Public Trustee intends to take with respect to the client's financial affairs.

Often, the Public Trustee is contacted when someone suspects that a friend or relative is vulnerable to financial abuse. It is important that the Public Trustee be able to respond effectively whenever there is a real risk of harm. However, it is in these cases that the Public Trustee is particularly vulnerable to hearing only one side of the story. Sometimes, those contacting the Public Trustee do not mention the existence of relatives who may have important information and concerns of their own about the situation. It is in these cases that we receive complaints from those who feel they were excluded from the Public Trustee's initial consultation process. By the time the Public Trustee becomes aware of the other interests involved, it may be difficult to undo the perception of unfairness which has been created by these one-sided communications. In our view, it is critical that the Public Trustee develop procedures which, to the greatest extent possible, ensure that all relatives and friends who are involved in the situation have been identified and, where appropriate, consulted.

Last year, we also noted the introduction of the Deputy Official Administrator Program for intestate estates. Previously, some intestate estates were administered within the Public Trustee's office, and others were administered by Official Administrators who did not report to the Public Trustee. The program was reorganized, and the Public Trustee herself became the Official Administrator. Deputies in various regions of the province report to her, while the Estate Administration Department continues to administer some estates internally.

We have received very few complaints about the Deputy Official Administrator Program. Those that we have received have generally related to problems which had occurred in the Office of the Public Trustee before the files were transferred to the Deputy Official Administrators. These complaints are usually about the length of time taken to complete the administration of the estates. Occasionally, we receive complaints that the Public Trustee, as Official Administrator, imposes unreasonable requirements for tracing all possible heirs. For obvious reasons, the Official Administrator must exercise great care in identifying potential heirs, but sometimes the possibility that heirs may exist is so remote that it is reasonable to make a distribution without requiring further levels of proof.

In the Guardianship Department, our report on Public Services to Children (Public Report No. 22, November 1990) has stimulated some useful discussions with the Public Trustee about the role of that office in administering the estates of minors. As well, we have asked the Public Trustee to consider the special issues which may arise when a ward is abused or mistreated while in care. What role should the Public Trustee play in these difficult cases? How does the Public Trustee interact with the Family and Child Services Division of the Ministry of Social Services and Housing? These very important questions are currently under discussion.

Gift to charity for daughter's benefit

The Public Trustee's female client was mentally handicapped and was living in an institution. Shortly before her father's death, he had given $20,000 to a charity and had then made a will leaving all of his estate to the client's brother. The Public Trustee instructed its lawyers to apply to vary the father's will so that the daughter would receive some benefit from the estate. Her brother then complained to us that the Public Trustee and its lawyers had refused to investigate his claim that his father's gift to the charity was intended to provide for his sister's care, and had failed to respond adequately to his attempts to settle the litigation which was likely to be expensive, and would erode whatever funds were left in the estate.

When we investigated the complaint, we found that there was some merit to the complainant's concerns. Although no formal agreement had been drawn up by the charity, it did seem likely that the father's only purpose in making the gift was to provide for his daughter's care. After we intervened, the Public Trustee reached a settlement with the complainant on the terms he had proposed some months before contacting us.

Sale of house opposed

The complainants were the grandchildren of a client who had recently been certified incompetent. He had been placed in a long-term care facility, and the certification was arranged through staff there, apparently without the involvement of the grandchildren. Their first dealings with the Trust Officer assigned to the case did not go smoothly, because of an unfortunate misunderstanding which was not the Trust Officer's fault. However, this led to some distrust on the part of the complainants. They were particularly concerned about the Public Trustee's management plan for the client, which involved selling his house, and they felt that it was unnecessary for the Public Trustee to be involved at all.

We were able to arrange a meeting between the complainants and the Public Trustee's staff, which we attended. It became evident that the primary concern of the complainants was to ensure that certain religious rites governing the period after the client's death were observed. They felt that if the house was sold, these rites could not properly be observed, and they believed that he would die shortly. If this were the case, it would make sense for the Public Trustee to postpone selling the house, but unfortunately an agreement to sell it had already been signed.

The Public Trustee obtained legal advice which indicated that indeed the proposed sale was binding. Although the purchasers were willing to postpone the possession date, they were not willing to cancel the agreement. However, the story had a happy ending. The client's physician concluded that his health was better than his grandchildren had feared. After considering the whole situation, they also came to the conclusion that the Public Trustee could provide a more efficient financial management service than they could provide themselves, and so they concluded that the involvement of the Public Trustee was desirable.

Siblings accuse brother of wastefulness

The unhappy results of a family dispute were demonstrated in a recent complaint to us about the Public Trustee's Protective Services function. Protective Services is the department which deals with requests for assistance when relatives, friends, or caregivers fear that a person may be at financial risk by reason of their inability to manage their financial affairs.

In this case, two of the three children of an elderly man contacted Protective Services. Their father was living in his own home with one of the other children. The son who lived with the father had recently undergone some major changes in his life and he had allegedly been spending considerable sums of his father's money. As well, the other children feared that their sibling had been subjected to financial pressure by one of his friends. What triggered the complaint, however, was his recent refusal to permit them to visit their father, claiming that their visits were too upsetting.

Without advance notice to the son, the Public Trustee immediately froze all of the father's assets, and his bank account. The Public Trustee then wrote to the son, explaining what had been done, and asking him to provide an accounting of his dealings with his father's money covering a period of many months. Given the nature of the communication, it would be difficult to construct any letter which would not upset the recipient. However, the letter received by the son seemed to have an adversarial tone. The son was frightened by the letter, and contacted us to complain that the steps taken by the Public Trustee in freezing the assets were unwarranted, that his father was not incapable, and that the Public Trustee had acted improperly in listening to only one side of the story before taking these steps.

Although we could understand the complainant's reaction to the sudden involvement of the Public Trustee and the tone of some of their communications with him, the relationships between the siblings had deteriorated significantly and there were financial circumstances which certainly required protection of the father while an investigation was carried out. A critical question, however, was the father's competency status. Differing opinions were offered by the physicians who examined him, and eventually it was necessary to involve the courts to clarify the mandate of the Public Trustee while the investigation continued. If the man was not incapable, the Public Trustee would have no authority to act on his behalf.

Although we attempted to improve the level of communication between the complainant and the Public Trustee's office, the complainant was unable to accept the legitimacy of its role in the situation. At that point, the family conflicts could only be resolved through the courts.

Ministry of Crown Lands

Resolved	23
Not resolved	-
Abandoned, withdrawn, investigation not authorised	7
Not substantiated	23
Declined, discontinued	7
Inquiries	3
Total number of cases closed	63
Number of cases open December 31, 1990	16

Over 90 percent of the land area of B.C. is held by the provincial government, which for legal purposes is known as "Her Majesty the Queen in Right of the Province of British Columbia" or, in shortened form, the Crown. A significant portion of this land area is administered directly by the Ministry of Crown Lands through leases or licences to individuals and businesses.

The leasing and licensing process used to be simpler than it is now, and it is unlikely to become less complex in the future. This is because land use conflicts are becoming ever more frequent, with higher profiles and more media attention than ever before. Whether the issue is aboriginal title, industrial development versus wilderness preservation, or contests between alternative commercial uses, such conflicts are likely to be the focus of considerable attention in the 1990s, and are an inevitable consequence of more people wishing to do more things with the land, whether for backcountry tourist recreation, cattle grazing, fish farming, or a personal residence.

The manner in which Crown lands are offered for sale, lease or licence is a matter of continuing concern to this office due to the ever-present potential for conflict. Management systems designed to ensure the administration of Crown lands with the greatest degree of fairness were the subject of the following comment in our 1988 Annual Report: "It is no accident that development which is sustainable will be, at the same time, development which occurs in accordance with the principle of recognition and reconciliation of potential conflict; in other words, development which is fair to all concerned." This observation has increasing relevance as the incidence of land use conflict grows.

The vanishing whale

What do you do with a dead whale that's stinking up your beach? In Oregon, state authorities thought they had the solution when they decided to plant explosives that would reduce a whale carcass to little bits. Problem was, the blast was bigger than expected, and hundreds of distant onlookers found themselves covered with rancid blubber. In B.C., a group of Haida tried an approach that was more successful as well as profitable. They towed a carcass out to sea and anchored it. When they came back later, the skeleton had been picked clean and they had a valuable relic.

In another case, a woman called us from the Queen Charlotte Islands to say there was a 30-foot gray whale on the beach opposite the subdivision where she lived. The body had been there a week, and the sea wind was carrying a powerful aroma. The caller was also worried about the safety of children playing on the beach. She had called the federal Fisheries department and the RCMP, and neither seemed anxious to deal with the rotting whale. She wondered if there was anything we could do to help.

As the ocean foreshore is provincial Crown land and thereby under the responsibility of the Ministry of Crown Lands, we contacted Ministry officials to talk about ways of resolving the problem. They rose to the occasion and agreed to co-ordinate the whale removal - or burial - with the Ministry of Environment. The Ministry had no funds earmarked for whale disposal, but efforts were being made to have such a fund included in the budget, as complaints about beached creatures of the deep were not unusual.

In this case, action by Crown Lands became unnecessary when mysterious forces intervened. The day after she had first contacted us, the woman called back to say that the whale had vanished - all except for its skin. There were no marks to show it had been towed - in fact, its disappearance was utterly baffling. In short, the woman's resolved complaint was replaced by an unsolved mystery.

A bull, a woman, a bucket of paint

A landowner in the South Okanagan area found that she had a severe personality conflict with a large bull kept by an individual on adjoining Crown land. The woman used to live in Alberta, where the responsibility rests with the owner of the animal to erect fencing to contain animals, and the woman was somewhat surprised to find no such requirement in British Columbia. When she attempted to build a fence herself, the bull intervened.

In fairness to the bull, it had recently suffered the results of an incident in which the woman had dumped some paint out of a window while doing renovations, allegedly unaware that the bull was standing below. The bull's mood was apparently coloured by this event.

The woman contacted both the Ministry of Crown Lands and the Ministry of Forests in an attempt to determine her legal position, but the answers she received were not entirely clear and at some points seemed contradictory. She turned to this office for assistance.

In investigating the matter, we found that the owner of the bull had a number of years ago made application to the Ministry of Crown Lands for a grazing lease. Most of the necessary paper work had been completed but, because a management plan outlining the way in which the Crown land was to be used was never signed by the applicant, no lease was issued. The applicant began making rental payments in the amounts specified by the lease, and Crown Lands did not pursue the matter.

When no Crown land tenure is in place, as in this instance, jurisdiction automatically falls to the Ministry of Forests, which does not offer grazing *leases* (which confer a legal right to exclusive occupation of the land for a specific purpose) but rather issues grazing *permits* under the authority of the *Range Act*. The Range supervisor for the Ministry of Forests explained that the tradition in British Columbia, which is reflected in law, is for grazing to be carried out on large, relatively unmanaged tracts of Crown land; in Alberta, on the other hand, parcels have tended to be smaller and intensively managed to produce continuous forage for grazing stock. Because grazing land in British Columbia covers such vast areas, the cost of fencing would be prohibitive, rendering ranching uneconomical. At the same time, problems with animal trespass have tended to be transient, like the animals; herds are constantly kept moving to fresh pasture.

In discussions with representatives from the Ministry of Forests, Crown Lands, and Agriculture and Fisheries, it became apparent that expanding settlement in rural areas is a source of increasing conflict between private property owners and ranchers. One representative suggested that part of the problem is caused when developers of subdivisions neglect to inform lot purchasers that animal trespass is likely and that the legal responsibility rests with the private owner to keep animals out by installation of adequate fencing.

In some areas, pound districts have been established under the provisions of the *Livestock Act*, which provides sanctions against animal owners who allow their livestock to cause damage to private property. However, the complainant's property was not within a pound district and she had no practical alternative but to install fencing. Fortunately, the owner of the bull agreed to restrain the animal so that this task could be safely carried out.

We were unable to substantiate the plaintiff's concerns about any provincial ministry, as her problem could not be attributed directly to provincial action or inaction. However, we passed on to her the information we had obtained, to assist her in understanding the somewhat complex nature of range law in British Columbia.

The homeless houseboat

When the operator of a marina tried to sell his operation, he made an agreement for sale of the upland property and, as to the water surface, applied for renewal of a Crown lease which had expired. In assessing the application, the Ministry of Crown Lands noticed that there was moored at the marina a floating home, in contravention of local zoning in the Squamish area. The Ministry announced that it would not issue a new lease until the floating home was removed, as the terms of the lease did not allow for it. The fee structure did not reflect residential occupation, nor had services such as water and sewer been provided for. In addition, the Ministry has a long-standing commitment to honour local zoning when issuing leases.

Anxious to secure the lease, the marina owner told the owner of the floating home to take it away, and threatened to tow it to an impound area if the homeowner didn't move it himself. The owner of the floating home felt caught in a no-win situation: the local government was considering legalizing the presence of floating homes through zoning amendments, but this political process was uncertain and unlikely to be completed in time to be of assistance to the complainant. He asked our office if there was any way we could help him.

The complainant's situation, while unfortunate, was not the result of unfair treatment. The Ministry had acted responsibly in ensuring that its leases took into account zoning bylaws, and the homeowner's main problem consisted in working out the relocation of his floating home. The complainant was advised that if he considered the actions of the marina operator to be contrary to law, he could seek independent legal advice with a view to a private remedy.

No hydro for squatter

A resident in the south Kootenay area complained that the Ministry of Crown Lands had abused its authority by ordering West Kootenay Power and Light Company to discontinue electrical service to his home.

When the complainant explained something more of the circumstances surrounding this incident, the reason for the Ministry's conduct became clear. For the previous 15 years the complainant had resided on Crown land without benefit of legal tenure or rent payment of any kind. His was a form of adverse possession, more commonly known as "squatting". When the power company extended electrical service to certain residences in the area, the complainant took advantage of this fact by arranging a hook-up with the usual monthly billings. At the same time, the Ministry of Crown Lands provided the complainant with a tenure application form, requesting, as it had apparently done previously, that he legalize his possession. The complainant declined to submit the application.

As the power line was an unauthorized improvement which could in law be viewed as a trespass, Crown Lands ordered the power company to remove the line. Crown Lands acted entirely within its jurisdiction by requiring the line to be removed completely, and the complainant's concerns could not be substantiated.

Developers eye greenbelt lot

Concern for the future of a park-like lot prompted a woman to contact our office. The neighbourhood lot was owned by Crown Lands and leased by a city. The lot was also included in the Greenbelt Registry, under the authority of the *Greenbelt Act*.

The woman had heard that developers and the local MLA were lobbying to remove the lot from the Greenbelt Register and thus open the way for development. She presented our office with a copy of a petition signed by over 200 people expressing opposition to the deregistration and development of the lot.

We explained to the caller that the purpose of the *Greenbelt Act* is to create a register, or inventory, of land considered by the Minister of Crown Lands to be "suitable for preservation as greenbelt land." The Act itself does not provide any power by which the Minister or anyone else may protect land from development; it merely provides a mechanism for maintaining an accurate and up-to-date record of any land deemed by the Minister to be "greenbelt land". The Minister may, with the approval of the Lieutenant Governor-in-Council, and after giving public notice, dispose of any greenbelt land. No other criteria are set out to govern the means of determining that decision.

Accordingly, we were unable to intervene with any decision by the Minister to remove or add land to the Greenbelt Register. However, we advised the caller that the Minister would presumably entertain proposals for removing land from the Greenbelt Register or, conversely, for leaving it in.

Steamed over stumpage rates

Holders of agricultural tenure leases issued by the Ministry of Crown Lands used to be entitled to remove timber on arable land at very low stumpage rates, the idea being to encourage land-clearing for agricultural purposes. A condition of such leases was that the lessee clear a certain percentage of the land and, prior to felling the timber, obtain a cutting permit which is issued by the Ministry of Forests but administered by the Ministry of Crown Lands in the case of agricultural leaseholders.

The holder of one such lease was in the habit of obtaining a cutting permit every year, but he never used it because lumber prices were low. One year, when the cutting permit again came up for renewal, the Ministry staff suggested to the leaseholder that, because he had no plans to cut the timber in the ensuing year, it would be an administrative waste of time to issue the permit. Consequently he agreed not to renew his permit, on the clear understanding that the non-issuance of the permit would not affect the other privileges attached to the lease - in particular, the stumpage rate.

What the Ministry of Crown Lands didn't know was that the Ministry of Forests, having concluded that economic conditions justified an increase in stumpage rates, had just engineered a policy change affecting holders of agricultural tenure leases. Specifically, the new policy set a condition whereby stumpage rates on existing cutting permits would not be hiked, but those on new permits would be set at the new, higher rate. This distinction was designed, in part, to discourage logging outfits from buying out a farmer's agricultural lease just for the timber.

Some time later the leaseholder in question decided to apply for a cutting permit again, apparently having decided that he would finally cut his timber. When he was told that, as the holder of a "new" permit, he would have to pay an increased stumpage rate, he complained to us that the Ministry of Crown Lands had acted in bad faith in promising him that his lease conditions would be unaffected. The matter was resolved when the Ministry undertook to review its position. It concluded that, given the special circumstances under which the complainant had failed to renew his cutting permit, the original commitment for the lessee to pay the lower flat stumpage rate would be honoured.

This was not the only person to complain to us about the new stumpage policy. A second farmer argued that he shouldn't have to pay the higher rate because his agricultural tenure lease had been obtained when the old policy was in effect. The question became somewhat academic when it was learned that the land on which the farmer proposed to cut the timber was non-arable, as a result of which he was not now and never had been eligible for the lower stumpage rate.

Slash-clearing required for good reason

A man who had purchased farmland at public auction complained to us that the requirements imposed by the Ministry of Crown Lands with respect to private road building were excessive. The complainant was in the process of constructing an access road to the land.

Upon investigation, we learned that the Ministry of Crown Lands had entered into a standard agreement with the complainant providing the complainant with authority to build the desired road across timbered Crown land. One requirement of the agreement was that the complainant observe legitimate directives from the Ministry of Forests, including the requirement to clean up and burn accumulated slash generated by the clearing of timber lands for road construction. The purpose was to minimize subsequent fire hazards. As this appeared to be a reasonable and sensible requirement, the complainant was advised that his concerns could not be substantiated.

Feuding partners

When the Ministry of Crown Lands ordered a truck owner to remove his vehicle from a forest road, the owner complained to us that the order was unfair and the deadline unreasonable.

Ombudsman office investigations begin with interviews to establish the basic facts. We assume nothing in advance, for the stories we hear may come to unexpected conclusions. We began by asking the complainant the obvious questions.

Had the truck had a mechanical breakdown? Well, no. So why was it there? Well, it was blocking the road. Accident? Well, no - actually, the complainant had blocked the road on purpose.

The long and the short of it was that the complainant, a lawyer turned logger, had had a falling-out with his partner in a timber-harvesting business. The Ministry of Crown Lands had provided road access so the partners could haul logs over public land. A disagreement over profit-sharing had turned into a full-scale feud, and the complainant had decided it was necessary to block the road to prevent his partner from hauling any more timber.

It turned out that the two-hour deadline was at the end of a two-week process of failed negotiations between the Ministry and the complainant to have the truck removed, so the complainant had had ample time to think about it. When the deadline passed, the Ministry had the truck towed away. As the Ministry had a duty to ensure that the road access was kept open and had made a reasonable effort to convince the complainant to clear the road of his own accord, we found the complaint to be not substantiated.

Fish farm zoning

A number of investigations connected with complaints received between 1987 and 1989 were concluded in the first half of 1990. These complaints all dealt with perceived unfairness in the administration of Crown land allocation for the purpose of netpen salmon farming in areas where residents vigorously opposed the introduction of light industrial activity to the natural beauty of the islands north of the Strait of Georgia.

These complaints proved to be a significant challenge for this office, for the primary reason that, although the process was perceived by some as unfair, it was nonetheless legal and for the most part in accordance with established Crown land policy. Naturally, this gave little comfort to the complainants. The first step taken by this office was to engage in extensive research on coastal resource management and resource dispute resolution. The resulting Public Report No. 15, Aquaculture and Coastal Resource Administration in British Columbia, was intended to assist Crown Ministries in applying principles of fairness in resource administration -particularly in the area of co-operative planning with coastal communities - to prevent resource use conflicts.

This provided little in the way of immediate benefit to complainants who had to contend with the fish farms in their midst, creating what they perceived to be a radical transformation of an otherwise perfect residential and recreational area. The fact that this office had enunciated principles applicable to aquaculture and other coastal resource uses did not mean that recommendations could proceed automatically for the relocation of a contentious development. As noted previously, the land allocation process was in accordance with law, and in law there is no "right to a view". Ultimately, the best protection for residents was that which the Ministry of Crown Lands had previously recommended to communities concerned about resource allocation - zoning under the *Municipal Act*. Quadra Island residents energetically pursued this avenue for approximately two years, culminating in the adoption by the Comox Strathcona Regional District of a comprehensive zoning plan for Quadra Island late in May 1990. While the Ministry of Crown Lands still possesses the right to issue a land tenure for any Crown land within the zoned area, any use of that land must comply with applicable zoning. This provides, for the first time, the protection against unanticipated or inappropriate development which these coastal residents have sought.

Only farmers need apply

Over a number of years, the complainants had expressed to the Ministry of Crown Lands an interest in purchasing an 80-acre parcel of Crown land. When the Ministry finally decided to put the land up for sale, the complainants were greatly upset to learn their consistent interest would not be rewarded by way of an offer from Crown Lands to negotiate a sale. Instead, the Ministry had chosen to commence a somewhat unusual process known as a restricted auction, and had established a reserve bid for the property which the complainants felt to be beyond their financial capacity.

We were unable to substantiate the complainants' concerns. The sale price for the parcel was established by the Ministry through an in-house appraisal. If the price was unrealistically high, that fact would presumably become apparent when it came time for individuals to bid.

It is a normal process for the Ministry of Crown Lands to place a parcel up for public auction, particularly where land in which private interest has been expressed is taken out of Crown Land inventory and placed on the market for the first time. Demonstrated interest in a parcel of land does not create prior rights over other individuals in the community who might also wish to bid on the property. However, the mechanism of the restricted auction was unusual - why was the land not publicly advertised and auctioned to the general public?

The reason, according to the Ministry, was that the parcel was of insufficient size and location to provide for a self-sustaining farming or grazing operation by itself. The Ministry's goal was not only to maximise sales revenue to the Crown but also to ensure that the land was put to a use which was both environmentally sound and economically productive - in this case, either farming or grazing. Therefore, invitations were extended both to the complainant and to individuals with nearby agricultural land holdings who had used the sale land previously under the authority of Ministry of Forests grazing permits. This did not, however, excuse any bidder from having to meet the requirement for current possession of agricultural land which was fully utilized and which would benefit from the addition of the 80-acre parcel for the creation of a larger, viable agricultural unit.

As the vendor, the Crown was both entitled and obligated to ensure that the property produced not just an adequate return to the Crown but also an appropriate use once in private hands. The criteria set by the Crown accomplished this to the limits of the Crown's authority. The complainants' disappointment was understandable, but the Crown's process was not unfair.

Missing: 1 old iron post

Hiring a surveyor before buying a piece of land may seem like an unnecessary expense, but it's a classic case of preventative wisdom. If the seller has made no fraudulent misrepresentation, and it later turns out that an old iron post has unaccountably wandered on a ancient survey, the purchaser may be in for a nasty surprise and less land than than he counted on obtaining. This is especially the case when the last survey of a property was conducted many decades ago, when surveyors used iron chains rather than the more accurate equipment available nowadays.

A family purchased a piece of land described as being 12.13 acres in area, based on a 1919 survey. Prior to the purchase, the family viewed the property but decided against putting out the expense of having it resurveyed.

Some time later the new owners measured the boundaries shown on their title and calculated that the property was not 12.13 acres but only 11.285. Their evidence was convincing enough to the Assessment Authority that it adjusted the taxes on the property without requiring proof through a survey. The family then asked the Ministry of Crown Lands, as the government agency in charge of surveys, to compensate them for the loss of almost an acre of land.

Only by a new survey could the property's true area be established. As three corner posts were visible, it was suggested efforts be made to locate the fourth post. Use of a metal detector failed to locate the fourth post, but the family felt they had evidence to vary one boundary's length from 1179.9 feet as recorded in the 1919 survey to 1188 feet. This added strength to the original suggestion that a professional survey would be the appropriate way to determine the property's true size. However, the family elected not to undertake the expense of obtaining a survey to settle the matter.

The Ministry of Crown Lands, through the Surveyor-General, has responsibility for adjudicating disputes arising from differences between surveys. It is not the Ministry's role to conduct surveys on behalf of landowners. In this case there was no cause for compensation, because there had been no error on the part of the Ministry; nor was there any role for the Surveyor-General to play, as the complainants declined to provide meaningful evidence in the form of a new survey report.

Same price to buy or lease

An elderly man secured a 30-year lease on waterfront recreational Crown land. Intending to assign the benefits of the lease to his children for their use, he prepaid the lease for its entire term. Approximately two years later, the Ministry of Crown Lands, under its recreational lot sale program, offered to sell the lot to the man. In accordance with established Crown land sale procedure, the Ministry obtained two independent appraisals. One of these estimated the value of the property to be well over $20,000; the other produced a figure of only $10,000. Again in accordance with established policy, the man was permitted to purchase the property, if he so chose, at the lower of the two appraisals. The question then arose - and this was the subject of the man's complaint to this office - as to how the prepaid lease would be handled.

The prorated value of the prepaid lease was approximately $12,000, which was $2,000 more than the purchase price. The complainant was of the view that upon termination of his lease by mutual consent in order that the property sale might proceed, he should receive not only clear title to the land by way of application of the prepaid portion, but also a $2,000 cash refund. The Ministry agreed with the first part of his contention and applied the prepayment to the purchase price, but took the view that it was not obligated to refund any prepaid amount in excess of the purchase price.

This office was unable to find that the Ministry's position was unfair. The original document offering the land for sale had stated clearly that the maximum amount which would be credited to the purchase was the value of the purchase itself. In effect, the complainant obtained clear title to the property for $12,000 instead of $10,000. Given that it was not unrealistic for an appraisal of a higher value on the land to be obtained, this office did not consider the results to be oppressive or unconscionable.

In addition, the reason that there was any credit at all was due primarily to the fact that the B.C. Assessment Authority in its last assessment of the property had placed upon it a market value well in excess of $20,000. It is important to note that this was the assessment upon which the lease rental amounts were calculated. Thus, the complainant was caught in the somewhat anomalous position of having a prepaid lease with a value greater than the market value of the property. As was pointed out to the complainant, this situation will occur whenever the last assessment is at odds with the market value as determined by independent appraisers, or where the market value of the property has in fact declined since the last assessment. The Ministry also produced to this office copies of its official land policy, which stated clearly, with descriptions and numerical examples, that no refund of prepaid lease amounts would be made in situations where there was a surplus after applying the prorated amount to a purchase price. In the end result, the complainant began with a right of exclusive possession for 30 years and ended up with clear title in perpetuity, at little or no additional expense.

A mess, no doubt, but not his mess

A salvage operator in Ocean Falls complained that the Ministry unreasonably withheld his deposit after he completed a contract to salvage two wooden buildings under the Ministry's management. The Ministry told him that the reason for withholding the deposit was that considerable debris had been left on the sites of the buildings. The contractor did not dispute that debris remained. However, he said, the Ministry was imposing more stringent cleanup requirements on him than it was on other salvage operators working on the site.

The complainant was not the first salvage operator to run into difficulties in Ocean Falls, the site of a coastal pulpmill acquired by the government in 1974 after the operation had failed in private hands. After struggling along for a few years under government management, the mill was shut down for good in 1980. Over the next five years the community became a virtual ghost town, its population declining from 3,500 to 60.

In 1985 the decision was made to dispose of the assets of the operation by auction. One of the purchasers was a salvage company, which later ran into difficulties attempting to remove the structures it had bought, and finally ceased operation early in 1987. The Ministry of Crown Lands, which had taken over responsibility for the site in 1986, set about finding someone to salvage the two remaining wooden structures on the industrial site. The complainant, as successful bidder in the subsequent tender process, arrived on the scene at this point. In an effort to ensure the work was completed this time, the Ministry included in the contract a clause setting a standard of cleanup and providing for forfeiture of the required deposit if the standard was not met to the Ministry's satisfaction.

The question ultimately turned on whether or not the complainant should be held responsible for debris left from previous salvage operations in addition to that produced by his own operation. The contractor was able to produce photographs of the site taken prior to and during the salvage operation. These pictures indicated considerable amounts of debris which would not have resulted from the salvage of the two wooden buildings to which the complainant's contract pertained. After considering this evidence, the Ministry decided to return the deposit to the contractor.

Hemmed in by oysters

The complainant's recreational island property fronted a bay which was partially occupied by a commercial fish farm with both a salmon netpen operation and a longline oyster culture facility. A point of land and an island beyond it roughly divided the bay into an east and a west arm. The salmon netpen operation and related facilities, including the home of one of the fish farm's operators, occupied a portion of the east arm of the bay. The complainant's land, and a nearby seasonal residence occupied by another party, were located near the base of the west arm. The oyster culture operation was also located in the west arm, anchored by lines strung across the west arm from the upland to the island. This made navigation from the base of the west arm to the mouth almost impossible, except for shallow-draft runabout boats which could manoeuvre close to the island.

The complainant contended that both the oyster culture operation and the salmon netpen facility were in violation of the applicable provincial and federal regulations; he argued also that the presence of the oyster longlines constituted a hazard to navigation and had a severe negative impact on the value of his recreational property.

The complainant brought his concerns to us several months prior to the release by this office of Public Report No. 15 on aquaculture and coastal resource administration. A representative from this office visited the site of the complainant's concerns in May 1989. A number of inquiries were later made to the Ministry by this office, resulting in meetings with both Ministry officials and the fish farm proponents late in 1990.

Although the complainant's concerns were understandable and although the situation appeared somewhat unique in terms of geography and relative impacts, this office was unable to substantiate the complainant's concerns, which were primarily focused on the commercial operations within sight of his property. In discussions with the Ministry of Crown Lands, which conveyed information received from the Coast Guard, it became clear that lines strung between the western upland and the island (both of which were Crown land) did not constitute a hazard to navigation. While they did occupy potential anchorage area which could be utilized by recreational vessels entering the lower west arm from the east arm, the fact remained that the mouth of the west arm was itself a navigational hazard due to a sandbar and extremely shallow waters at low tide.

The complainant was extremely concerned about loss of recreational anchorage for the boating community in general and about the impact on property values due to the spoiling of an otherwise uncluttered view by coloured longline floats. This office could only respond that, as noted in the Public Report, there is no "right to a view". With respect to anchorage, we learned that the Ministry of Crown Lands had done its own "swing study" to determine the space available for safe anchorage, taking into consideration the reality that a boat of a certain length, at anchor, will swing in a specific radius given certain wind, wave, and tidal action. The Ministry determined that four to six large boats could use the remaining anchorage safely. The Ministry argued that it had preserved the riparian rights of the complainant by ensuring that he had navigable access to his property within the bay, based on a benchmark boat length of 40 feet.

In reporting to the complainant, we noted that the fish farm had been not only the subject of provincial regulatory approval but also had received intense scrutiny from the residents of the island in their creation of coastal resource policies and bylaws. In that sense, the fish farm had endured the full political process at the local level, and the resulting bylaw, which accommodated the presence of the fish farm with certain restrictions, was proof that the community had turned its mind collectively to the question of whether a commercial presence in this bay was appropriate. We also noted that co-existence between recreational and commercial interests in a bay of limited size requires both good will and, occasionally, a collaborative approach to creative problem-solving. In this respect, the fish farm proponents emphasized to this office their desire to reasonably accommodate the needs and interests of other residents of the bay, and stated that they were hoping to move to a form of oyster raft culture which would remove the need for a relatively unsightly collection of floats. This, too, was communicated to the complainant in our final report.

Although we could not substantiate the complaint in this instance, the concerns of this office regarding integrated management of coastal resources remained. It should also be noted that the conflicts apparent in multiple use of coastal areas are no different in substance than those conflicts which have surfaced farther inland with respect to multiple use of forest lands. The accommodation of competing concerns through a process of planning, public participation, and consensual resolution of disputes remains a vital interest of this office and one that will occupy a significant portion of the efforts of the natural resource team of this office in 1991.

Ministry of Education

Resolved	6
Not resolved	-
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	3
Declined, discontinued	9
Inquiries	20
Total number of cases closed	41
Number of cases open December 31, 1990	20

As in past years, we received complaints about schools and school boards although the Ombudsman has no jurisdiction to investigate either directly at this time. Thanks to the co-operation of the Ministry staff we are able to provide assistance or information on many of these complaints.

Letter grades not good enough

A woman complained that the Ministry had permitted schools to remove percentages from the official transcripts. The woman's daughter, a grade 12 student, was planning to apply to an out-of-province university where percentages on transcripts are required.

We were able to close this file as resolved. Provincial exams are returned to the schools with a percentage and a letter grade. The Ministry liaison employee agreed to assist the woman if the school would not put percentages on its students' transcripts. As the school had not at that time refused to use percentages, the woman was satisfied that assistance would be available if she needed it.

Parents' rights to information

A man complained that his daughter's school refused to provide him with information about his daughter. He was a non-custodial parent, but had access rights to his daughter.

We contacted the Ministry, which agreed to contact the school. The school agreed to consult with the father after he provided proof of his right to access.

November's child must wait a year

We received many complaints about amendments to the *School Act* which require a system of "dual-entry" for children entering kindergarten. Many children whose birthdays were after October 31 but before December 31 were not eligible to enrol in kindergarten starting in September. In the past, children who turned five before the end of the calendar year were eligible to start kindergarten in September. Many parents appeared to be caught unawares, and many were unhappy about the resulting delays for children starting kindergarten. One woman even said that had she known about this five years earlier, she would have let her doctor induce labour so her child would have made the October 31 deadline.

At the outset we clarified to each complainant the jurisdiction of our office. At the moment, the jurisdiction of this office extends only to provincial government Ministries, Crown corporations, boards and agencies in which the majority of directors are appointed by the provincial government. Our mandate is to ensure that policy and legislation are applied in an administratively fair manner. The Ombudsman can only investigate the content of legislation when our office believes that legislation to be unjust, oppressive or improperly discriminatory.

The new "dual-entry" system provides a September entry date for all children with birth dates between May 1 and October 31 and a January entry for all children with dates of birth between November 1 and April 30. Although it is true that children entering the kindergarten school system will be divided into two groups on the basis of age, it does not follow that the creation of the categories results in unfair discrimination.

We referred our complainants to either the Minister responsible or to their MLAs for discussion of changes to the legislation.

A long wait for payment

For most government employees, knowing that they will receive a paycheque every second Friday provides some sense of security. Unfortunately, contractors to the government are less likely to receive payment that regularly. While all attempts seem to be made to expedite payment once invoices have been submitted, delays do occur.

A contractor contacted our office after waiting for payment for two and a half months. We contacted the Ministry and were advised that the reason for the delays was that the invoices spanned two fiscal years and were cost-shared by two divisions. The Ministry agreed to rush payment and apologize to the complainant for the delays. In addition, they agreed to pay interest on any money owing after the 61st day after billing, as required by the *Financial Administration Act*.

Ministry of Energy, Mines and Petroleum Resources

Resolved	7
Not resolved	-
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	4
Declined, discontinued	2
Inquiries	-
Total number of cases closed	16
Number of cases open December 31, 1990	6

Resources drawn from the ground contribute greatly to the B.C. economy. The primary task of the Ministry of Energy, Mines and Petroleum Resources is to encourage the mining industry while minimizing the social and environmental costs associated with major mining projects or exploration initiatives.

The nature of the mining process - from claim staking to production - creates an ever-present potential for conflict with the interests of other resource users. Where claim staking or exploration takes place in remote areas, the role of the Ministry may be limited to ensuring a minimal environmental impact or perhaps adjudicating competing claims under the *Mineral Tenure Act*. In areas of greater population or interest, conflict may occur where certain proposed developments on Crown land appear to be incompatible with claim development. On a more sophisticated level, the Mine Development and Review Process (MDRP) seeks to identify and, if possible, resolve conflicts through an inter-ministerial committee. On a more informal scale, a referral process similar to that employed by the Ministries of Crown Lands and Forests is utilised to acquire information about possible negative impacts from exploration projects.

This office on occasion deals with complaints relating to conflicts among proponents of different projects whose goals have not been fulfilled by the Ministry; sometimes one party may be seeking to exploit the wording of particular legislation and may not be happy that the Ministry simply doesn't see things his or her way. It remains the objective of this office to offer an independent perspective and, where appropriate, assist by making recommendations for administrative refinement to reduce the likelihood of conflict.

The roving prospector

A prospector went to a government agent's office to get some claim tags - the metal markers used to stake the borders of a claim. Having bought the tags, he left town and headed for the bush to find his fortune.

Meanwhile, the government was amending the Regulations to the *Mineral Tenure Act*. Notices of the amendment were posted in government agents' offices. The notices informed prospectors that they could trade in their old tags for the new ones for free before a certain date, after which a fee would be charged.

The prospector returned to civilisation to stock up with provisions after the deadline. Someone told him the news. He went to the government agent's office to trade in his tags and was told it would cost him $138. He pleaded with the government agent. How could he have known about the deadline, he argued, when all the time he was out in the bush? He got sympathy but no satisfaction.

The prospector pondered his circumstances. The more he thought about it, the more it seemed to him it wasn't fair. He called our office and told us so. We thought he had a point. We talked it over with the Ministry, and the Ministry issued a refund.

Pleased with this turn in his luck, the prospector headed back into the bush with his new claim tags, optimistic that this time he would strike it rich.

Payment late, mining claim forfeited

The complainant, a representative of a firm that held a number of mining claims, attended at the Vancouver office of the Ministry to renew the claims. The *Mineral Tenure Act* requires that for each claim, evidence of development of the claim toward active mining status be submitted annually, or a fee in lieu of development be paid on or before the end of the day which is the anniversary date of the filing of the claim. At the office counter, the complainant was apparently shown the claims book, which contained information as to the various anniversary dates for the claims. However, the complainant told us that she had been given inaccurate information as to the expiry dates for two of the claims, the result being that she did not pay the required fee that day but erroneously submitted it a couple of days later. By that time the claims had by operation of law forfeited to the Crown, and could be subject to restaking by other parties. This is in fact what happened. Although the complainant took steps to restake the expired claim immediately, over 50 percent of one of the claims had been overstaked by another individual, and this area was lost to the complainant.

Upon investigation, the complainant's allegations could not be substantiated. This office found that the practice of showing the claims book to individuals who are making renewal payments is reasonable, as it minimizes the chance of confusion and mistake. It also to a certain degree places the onus upon the applicant to visually confirm the renewal date and act accordingly.

The complainant naturally wanted an extension of the time for filing of the renewals, but our review of the *Mineral Tenure Act*, in particular section 31, found that the Ministry had no discretion in the matter. Failure to comply with the Act on or before the anniversary date was fatal to the continued existence of the claim. While such absolute measures might seem harsh, it should be remembered that such provisions are usually double-edged: while they can result in a loss of a claim where there is a failure to renew by the expiry date, they also provide both existing claim holders and new claim stakers with the legal assurance that they can sustain their claim if the provisions of the Act are followed.

No way to buy a piece of land

When plans were announced to run a natural gas pipeline to Vancouver Island, the Ministry of Energy, Mines and Petroleum Resources created a Crown corporation to purchase rights-of-way for the line that would carry gas to Island communities. The corporation in turn hired a private company to negotiate purchase prices with landowners.

A young family complained to us that they had been unfairly treated by representatives of the company. Although the family accepted the need for the right-of-way, their plans to develop their five-acre parcel were frustrated. What annoyed them most was the fluctuating prices offered for the land. The initial offer of about $3,000 was withdrawn and replaced with an offer of $2,100 which later rose to $6,300 and again to $9,000, which the family accepted. The company representative then reneged on the agreement and came back with a reduced offer of $7,000, accompanied by veiled threats about the difficulties of expropriation and the powers of the Expropriation Compensation Board.

We arranged a meeting at which a representative from the Ministry attended with the family. It came to light at the meeting that no land appraisal had been done and no explanation of legal rights had been given; instead, the company representative had insisted that his lengthy experience was sufficient to establish a reasonable offer. Before the meeting was over, the Ministry's representative stated that the Ministry's policy for land acquisition had not been properly followed by the company. He undertook to ensure that immediate action was taken to remedy the complaint.

The family met with representatives of the company the following evening. Two family friends were present as witnesses. At first, the representatives refused to discuss the proposal in front of the witnesses, claiming that only a lawyer could be present. The family refused, and eventually the representatives agreed to the $9,000 price that the company had previously agreed to before reneging. The Ministry, for its part, immediately reviewed its administrative procedures with the company to ensure that they were understood and adhered to in the future.

Ministry of Environment

Resolved	22
Not resolved	-
Abandoned, withdrawn, investigation not authorized	14
Not substantiated	35
Declined, discontinued	19
Inquiries	11
Total number of cases closed	101
Number of cases open December 31, 1990	42

Society is becoming increasingly concerned with the impact of economic "externalities" - costs associated with industrial production and growth on which it is difficult to put a price tag, and for which the true cost is not borne by the producer. This is the "public cost" associated with life in an industrialized society; the difficult decisions about trade-offs involved with the competing considerations of environmental and economic quality create increased challenges for the Ministry of Environment.

The Ministry not only operates independently by administering the *Waste Management Act*, *Wildlife Act*, *Water Act*, *Pesticide Control Act* and other legislation, but acts also as a "referral agency" when tenure or allocation decisions are being made by ministries such as Forests or Crown Lands. While the Ministry acts as an advocate of those public interests it is responsible to protect, it must also deal with whatever limitations are inherent in the management systems of the ministries to which it provides referral information. This raises the issue - which now forms a recurring theme among resource ministries - of integrated management. What should it mean and how should it look in practice?

This office is pleased to be able to consult informally with the Ministry on a variety of matters within the Ministry's mandate, and in turn to be viewed as a "resource" for the Ministry on questions of administrative fairness arising from the many responsibilities which the Ministry is called upon to fulfil.

Alfalfa fields forever

The hunting of big game in the East Kootenays is the basis of a thriving industry which has been greatly assisted by the Ministry of Environment's wildlife enhancement programs. On the downside, increased hunting opportunities have created economic hardship for some ranchers. A number of them approached our office over a decade ago, complaining about the effect of the Ministry's activities on their livelihoods. In view of a recent government initiative to alleviate the problem, this office has now discontinued its involvement.

In 1982, the Supreme Court of British Columbia concluded that one rancher's losses were directly attributable to the Ministry's effort to increase the East Kootenay elk herd in the mid-1970s by providing winter fodder for the animals. Having become accustomed to the high-quality feed provided by the Ministry, the elk had sought suitable alternatives in ranchers' fields after the feeding program was discontinued. The results were devastating.

Damages were not awarded in the court case because of the statutory immunity granted to the Crown. However, the judge said that the Ministry had a moral obligation to assist ranchers.

The ranchers' efforts to mitigate their losses were largely unsuccessful. Although they could take measures to protect stored crops, the worst losses, resulting from the destruction of growing crops, were unavoidable. In addition, ranches suffered from the presence of so-called "homesteader" elk. Lured by the attraction of alfalfa fields, these animals altered their normal pattern of winter migration and remained on ranches year-round. Elk frequently damaged livestock-control fences, necessitating constant repairs. Installation of the eight-foot-high chain-link fencing needed to elk-proof ranchers' fields was prohibitively expensive. Cattle ranching has become an increasingly difficult way to make a living, and the added burden of wildlife damage had severe effects on the viability of some ranchers' operations.

The number of elk in the area had more than tripled over a decade, from an estimated 7,900 in 1975 to 28,000 in 1988. The extent to which this number of animals could be sustained by Crown land was masked by the involuntary contribution of ranchers' protein-rich crops.

A great deal of time and money has been spent over the years studying the wildlife-cattle conflict in the East Kootenays. During our investigation, reports were submitted to government and meetings were held with a number of senior government officials. Two consultants hired by government also submitted reports on the problem. Both consultants, in 1985 and in 1989, recognized the injustice to ranchers and recommended compensation on the basis of equity. During the latter years of our investigation, a government MLA became aware of the ranchers' dilemma and made considerable efforts to obtain relief for his constituents. However, no promising initiative was taken to address the problem until quite recently.

In July 1990, the East Kootenay Trench Agriculture/Wildlife Committee was established by the provincial government. The task of the committee was to devise and oversee a strategy to reduce the wildlife/livestock conflict. If successful, this strategy could act as a model for other areas of the province. Funding in the amount of $350,000 annually for the next three years has been made available from the provincial government's Sustainable Environment Fund.

If it isn't dust, it's noise

A regional district rezoned a rural residential area to enable a company to establish a mill. The purpose of the operation was to grind silica slag, obtained from a nearby iron ore smelter, for use in manufacture of sandpaper and other abrasive materials. A by-product of the grinding process was a gritty substance known as "fugitive dust" that settled on neighbouring properties, one of the owners of which complained to us that he was constantly having to sweep the dust off his porch, and he was concerned about the effect of the abrasive particles on the health of his children.

The Waste Management Branch resolved the problem for the complainant by requiring the company to install dust-suppression equipment. However, this process led to another source of irritation to the complainant and other neighbours. To make up for the downtime that occurred as a result of the installation of the equipment, the company began operating till 1 o'clock in the morning and on weekends. The complainant said the noise from the operation was so persistent and intense that his family was unable to sleep.

Complaints to our office about noise are not infrequent, especially in situations where industrial operations exist side by side with residential areas. Although noise-control provisions have begun to appear in environmental protection legislation in some jurisdictions, there is currently no B.C. legislation (apart from Workers' Compensation Board requirements) placing limits on noise. The authority to set those limits rests with municipalities and regional districts, and the decision to set such limits is a difficult one where noise is an inevitable component of industrial activity. We could only suggest that the complainant and his neighbours put their case to their regional district representatives.

The high cost of recycling oil

A service station owner told us he was facing considerable economic hardship as a result of a new regulation under the *Waste Management Act* prohibiting the disposal of waste oil. He explained that the only company in the area capable of picking up and refining waste oil had increased its fee by a considerable amount since the law had come into effect.

We contacted Ministry of Environment officials, who informed us that they were in the process of developing a new policy, in conjunction with the industry, that would ease the financial burden for service station owners by subsidizing their cost in recycling used oil. Under this policy, oil companies would be required to purchase and refine waste oil from service stations. In addition, provincial government contributions towards the capital cost for expanding the refining industry are expected to increase competition in the refining process.

Permit process a mystery to mill owner

The owner of a small shake and shingle mill was forced to shut down his operation because he lacked the necessary permit to burn waste from his mill. For some years he had been able to do so under a burning permit issued by the Ministry of Forests. The problem arose when the Ministry of Environment instructed him to obtain a waste management permit to replace the burning permit. This he had been unable to do, and he sought our assistance.

In investigating this matter, this office found that the Ministry of Environment has been making efforts to control the burning of waste at small mills by licensing them under the *Waste Management Act*. In accordance with this policy, the Waste Management Branch had requested that the Ministry of Forests not issue another burning permit to the complainant. The *Waste Management Act* authorizes the Ministry of Environment to require a mill operator to upgrade his facilities to meet standards set by the Ministry. The regulations governing the application for the permit require that the volume and characteristics of the waste discharged be described on the application.

In this requirement lay the complainant's dilemma. He had been unable to understand how to fill out the section describing average daily concentrations of particulate solids (mg/m^3), gases (mg/m^3), and liquids (mg/m^3) at 20 degrees Celsius and one atmosphere pressure. He had an open ring in which he dumped the waste with a front-end loader. This ring was part of his burner, which, he was advised by the Ministry of Environment, was inadequate for efficient burning with minimal pollutants.

The inability of the complainant to provide the technical information necessary for an assessment of his operation made his application unacceptable. After we contacted the Ministry to discuss the problem, the technician from the district office went out to the mill and helped the complainant fill out the form. The Waste Management Branch then accepted the application and allowed the burning of waste with a plan in place for the mill operator to upgrade his burner over a negotiated time frame. They also indicated which burner would be acceptable for the complainant's operation.

Cause enough for firing

A biologist complained that he had been arbitrarily fired by the Ministry of Environment for trumped-up charges of insubordination. His many allegations included political interference in favour of wealthy developers, blind eyes turned to environmentally devastating actions, and orchestrated reprisals aimed at the complainant for taking too strong a stance in defence of habitat protection.

This office was unable to substantiate the complaint. The biologist had enjoyed the benefit of a full arbitration hearing, lasting four days, at which he was represented by union counsel. The arbitration award was highly detailed and made extensive reference to a chronology of correspondence which established that the complainant had made judgements on contentious issues without the full facts and had been defiantly insubordinate in his relations with his administrative superiors.

The technical ability of the complainant and his dedication to environmental conservation were never in question. Nor, for the most part, were his motives. However, the manner in which he sought to achieve his ends, through defiant insubordination, public disclosure of Ministry documents, and outspoken criticism in public of both his Ministry and other Ministries, were found by the arbitration board to be adequate cause for dismissal under any fair system of employment.

The complainant considered that he should be provided relief as a whistleblower dedicated only to the highest ideals. This office disagreed. The issue of whistleblowing was addressed in principle at pages 14 and 15 of the 1989 Annual Report of this office. Whistleblowing does not necessarily connote leaking documents to the press; more appropriately, it means going beyond the established reporting hierarchy to convey one's concerns confidentially to those vested with the authority to act on the information, including the deputy minister, or, if a resolution is not obtained there, to the police, the Auditor General, or public health inspectors or fire departments as appropriate, given the nature of the concern. In addition, as stated in our annual report, "it should also be well known within the public service that public employees have the right to report their concerns regarding improper public administration to the Ombudsman, notwithstanding their general duty of confidentiality. Such concerns can relate to decisions or actions of government that are thought to be unlawful, oppressive, improperly discriminatory, arbitrary, done for an improper purpose, negligent or otherwise unfair."

Up the creek without a drainage

The complainant was one of several owners of a Vancouver Island farm that had originally been brought into production through the industrious creation of a network of drainage ditches to convert the swampy land into workable soil. Adjacent to the farm was a small lake which provided sub-surface soil irrigation; the lake in turn drained into a creek which followed a shallow route through a number of downstream properties.

The complainant was concerned that the drainage provided to his land by operation of the creek was inadequate. He had had various dealings with both the provincial Water Management Branch and the federal Department of Fisheries and Oceans regarding "cleaning out" the creek to increase both the grade (velocity) and volume of water transport. Federal Fisheries was involved because the stream had high "fisheries values" as a spawning channel, and it is their mandate under the federal *Fisheries Act* to preserve spawning areas.

The complainant's main contention was that the Water Management Branch was not providing adequate assistance to enable him to carry out mechanical digging operations in the stream to accomplish the desired effect. Upon investigation, we were advised that many of the downstream neighbours objected vigorously to the complainant's proposal on the basis that it would interfere with the operation of the stream in providing sub-irrigation to their own properties. We also learned that the Water Management Branch had in the past taken certain actions that were beneficial to the complainant, one example being an order to remove a sandbag weir which a downstream neighbour had constructed to provide a measure of water storage. This weir had the unfortunate effect of limiting the drainage capacity of the creek, causing flooding to the complainant's land.

The Water Management Branch had the difficult task of balancing the complainant's desires against the interests of his downstream neighbours, ensuring that the general provisions of the *Water Act* were observed, and co-operating with federal Fisheries in the pursuit of their mandate. We found that Water Management continued to stand ready to assist the complainant if he could demonstrate that his proposed actions had the approval of both the federal Fisheries department and the individuals whose property he intended to cross. We considered the history of Water Management's dealings with the complainant to demonstrate consistent fairness and good faith. On that basis, we could not substantiate the complainant's concerns.

Not clearly a well, not definitely a spring

A resident of the Ladysmith area complained that the Water Management Branch had acted inappropriately by granting a water licence to a neighbour to draw water from works located on the complainant's land. Such licences are routinely granted in areas where water is scarce. What made this situation unusual was that the complainant claimed the source to be a well from which ground water was pumped to supply domestic needs. Under the *Water Act*, ground water cannot be made the subject of a water licence.

Indeed, the complainant had previously made her own inquiries to the Water Management Branch with respect to obtaining a licence on the works in order to assure her priority of use. At that time, she had been told that a well could not be made the subject of a water licence. Thus, when she learned that her neighbour had been successful in obtaining a licence on the same works, she was upset.

It should be noted that water from the works (a series of concrete rings set in a gravel field after excavation) had previously been shared by the prior owners of the property. This arrangement continued with the complainant and her neighbour, but broke down after the neighbour sought, unsuccessfully, to formalize the agreement by obtaining an easement to ensure legal access to the works.

After making a number of expensive and unsuccessful attempts to drill a well on his own property, the neighbour applied for and received the water licence which was the subject of the complaint. The licence was granted on the basis that the works was not a well from which ground water was obtained, but rather a spring, which is licensable under the *Water Act*. Dampness in the general area and surface seepage were cited by the Water Management Branch as the basis for drawing this conclusion.

The complainant, who contacted our office in mid-1987, was advised that there were a number of remedies available under the *Water Act* which she should pursue. She took this advice, and filed an objection with the local water manager. This was dismissed, and she appealed the case to the Deputy Comptroller of Water Rights, who dismissed her appeal. Her next appeal under the *Water Act* was to the Environmental Appeal Board, which supported her position and ordered cancellation of the licence issued to the neighbour. The Environmental Appeal Board looked at the circumstances at the time of issuance of the water licence and concluded that the works did not exhibit the characteristics expected of a spring - i.e., water did not overflow the top of the rings under its own pressure, but rather remained within the sump, having to be withdrawn with the aid of a pump.

At this point the character of the complainant's concerns changed markedly, and she again contacted us two years after her initial dealings with this office. Having spent in the neighbourhood of $30,000 to secure legal representation and the assistance of expert witnesses at the Appeal Board hearing, and having been, in her view, vindicated by the result of the hearing, the complainant argued that the decision of the Deputy Comptroller was patently unreasonable and caused her to incur unnecessary expenses.

After extensive document review, investigation, and discussions with the Water Management Branch, we were unable to substantiate the complaint. The Environmental Appeal Board has no jurisdiction to award costs, as a result of a policy established by legislation. The only basis upon which this office could have recommended compensation for expenses would have been if the decision of the Deputy Comptroller had been made either in bad faith or with reckless disregard of the facts or applicable law. In our analysis, neither of these elements was present.

Representatives of the Water Management Branch, including its legal counsel, made the following points:

1. This case was not unique. It was observed that if the Water Management Branch had to revisit licensed springs where works similar in appearance to a typical well existed, Water Management would be put in the position of having to cancel licences throughout the province, as that which was formerly a spring by virtue of surface seepage in that area may no longer exhibit the same characteristics;
2. With respect to our concern that the licence should have been issued based on the state of the works from which water was drawn *at the time of application*, it is significant that the courts have directed the Water Management Branch in various instances to look at the past history of a water source in cases where the nature of the source has been disputed;
3. It was also revealed that in certain instances sources are developed by way of works such as a gravel field and concrete rings in order to test the source before application is made for a water licence - this is significant given that the introduction of a "sump" can itself change the hydrological characteristics of the water source in that area;
4. It was learned that the Deputy Comptroller and his assistant waited for a decision from the Environmental Appeal Board in a case involving circumstances similar to the complainant's, in order to gain additional guidance on matters relevant to the Board's jurisdiction. This was useful in demonstrating that the Deputy Comptroller was attempting to make a decision consistent with accepted principles of equity, statutory interpretation, and watercourse engineering as enunciated by the Board.

It was concluded that while the Comptroller and the complainant had a legitimate difference of opinion, to support the complainant in the manner sought would work a greater injustice to the system of water management as a whole, by introducing a significant element of uncertainty into the administration of existing licences.

Some dock

The owner of a lakefront property used concrete blocks to build a boat-launching structure that took up most of his 100-foot frontage and extended almost 40 feet offshore. The neighbours were not happy with this intrusion on their view and with the disruption of the natural shoreline. When they found out that necessary permits had not been issued, they complained.

Several authorities shared jurisdiction over lakefront projects in the area. Their responsibilities included the following: ensuring compliance with bylaws affecting building setback distances (the local District); protection of fish habitat (federal Department of Fisheries and Oceans); maintaining uninterrupted passages on navigable waterways (Canadian Coast Guard); preventing unlicensed intrusions onto the foreshore (Ministry of Crown Lands); and protection of water quality (Ministry of Environment). Each of these authorities has a permit approval requirement.

On being approached by the neighbours, each authority documented its concern about the actions of the property owner and attempted to have him remove the trespass. He refused, then came to us for assistance. He told us that he had deliberately not sought approval for his dock. He knew it was a trespass, but, as he put it, "everyone trespasses".

Regardless of how many people may trespass illegally and get away with it, the complainant could not presume a right to ignore a variety of legal requirements, especially with an intrusion that was such a significant and blatant disturbance of the shoreline. The facts supported the order to remove the trespass and restore the shoreline boundary to its natural state, and we could not substantiate the complainant's argument that the various authorities were being unreasonable in refusing to overlook his actions. The Ministry of Environment confirmed that all trespasses brought to its attention would be treated in the same way. The property-owner has since appealed the order to remove his trespass.

Water, water everywhere, nor any crop to pick

A rural landowner complained that his property was being flooded by the neighbour and that the Water Management Branch would do nothing about it. The neighbour, it seemed, had obtained a licence to divert water from a stream for irrigation purposes. He then loosely interpreted irrigation purposes as including the building of a substantial pond, into which he introduced some fish with which to start a fish farm. This was not what the Water Management Branch had in mind when issuing the licence.

What brought the complainant to our office was the fact that the dam that was built to create the pond was spilling large quantities of water onto his land, which lay downhill from the pond. The complainant had already won a civil suit against his neighbour after his crops were flooded. Now he wanted some action from the Branch, which had ordered corrective works but were lenient in ensuring compliance.

Our review of the circumstances suggested that it might be beneficial to bring a fresh perspective to the problem. The Ministry agreed and assigned a senior member of staff, not previously connected with the dispute, to do the review. This brought about corrective works and a clear base upon which any future order from the Ministry would be immediately complied with, or prosecution would result.

No bull this year

A wildlife guide-outfitter complained that after he had booked clients for an expected 11-day limited-entry moose hunting season in the fall of 1990, the Ministry had decided that the open season would only be four days long. His clients were demanding the return of their deposits and compensation for non-refundable air fares. The guide felt the Ministry was responsible and should foot the bill.

In wildlife management, the Ministry's principal goal is to ensure the perpetuation of species. A shortage of prime bull moose can cause cows to miss impregnation early in their estrous cycle. Late conception causes calves to be born later in the year when fodder is past its prime, as a result of which growth of animals is slower and they are more susceptible to predators. Hence, maintaining strength in the prime bull population is vital to the viability of the species.

An assessment from the 1989 hunt by the Ministry, combined with considerable input from wildlife-oriented citizen groups, indicated to the Ministry a need to take action to protect the prime bull population. The decision to shorten the season was publicized by press release on May 29, 1990, allowing some five months for guide-outfitters to rearrange their clients' schedules.

It is a standard and well-known practice that any information distributed about hunting areas, season duration and bag limit is conditional until the final decision is announced each year. While the 1990 season length was much shorter than in previous years, the Ministry had evidently exercised sound judgement - verifiable only by post-season evaluation - in meeting its responsibility to ensure the stability of the moose population, and had taken reasonable steps to make its decision publicly known in good time. Consequently we were not able to substantiate the complaint.

Injunction reins in horse packers

A group of horse packers and their hunting clients complained to our office after two of the packing businesses were served with injunctions obtained by guide/outfitting companies. These injunctions were intended to prevent the packers from entering areas licensed to the guide/outfitters (in some areas covering thousands of square miles of Crown land), on the basis, according to the guide/outfitters' allegations in court, that packers were engaged in unlicensed guiding activities, contrary to the provisions of the *Wildlife Act*. The packers took the position that they were not engaged in guiding at all; rather, within the definitions of "guide" and "hunt" as provided in the Act, they were simply transporting hunters to a general hunting area and providing a base camp from which the hunters would set off unassisted.

The common concern expressed by the complainants was that aggressive legal action by the guide/outfitters would put some, if not all, packers out of business. They wanted the Wildlife Management Branch to intervene in the legal dispute to defend its interpretation of the *Wildlife Act*, which the packers understood to be consistent with their own. The basis of their complaint to us was the refusal of the Ministry to comply with their request.

We were unable to substantiate the complainants' concern regarding lack of action by the Wildlife Management Branch. The legal battle was a contest between two private parties, each of which was attempting to advance its own interpretation of the *Wildlife Act* to further its own interests. Provincial legislation is being interpreted by the courts every day to establish certain rights as between parties. Agencies of government do not intervene in such cases; nor should they, unless they are a party to the action or a constitutional question is raised which may put in doubt the government's right to legislate. Consequently we advised the packers that they would have to follow a private legal remedy, and if necessary claim damages and costs, should the actions of the guide/outfitters turn out to be groundless.

Hunter stymied by permit restriction

An avid big-game hunter moved from British Columbia to the United States, but wished to continue hunting with his B.C. friends. The B.C. *Wildlife Act* and Regulations require non-residents to be accompanied by a licensed B.C. guide when hunting big game. The legislation does allow a B.C. resident to apply for a permit to accompany a non-resident in place of a licensed guide.

The "British Columbia Hunting and Trapping Regulations Synopsis" published by the Ministry of Environment's Wildlife Branch states that, if the visitor is a Canadian resident, any qualified B.C. resident may apply for a permit to accompany the visitor. (A "qualified" resident is one who holds a valid hunting permit, hasn't accompanied a non-resident hunter for a certain period of time, etc.) If the visitor is from outside Canada, only a close relative of the visitor may apply for the permit.

The complainant, who has maintained his Canadian citizenship while living in a U.S. state bordering on B.C., felt it unfair that he should be treated differently than a resident of Alberta. He wanted the Ministry to issue a permit to one of his B.C. friends to accompany him while hunting big game in B.C. Relying on the interpretation in the Synopsis, the Ministry had refused.

We reviewed the *Wildlife Act* definitions of "non resident" and "non resident alien" and discovered that a Canadian citizen has the same status under the legislation as a person resident in Canada, no matter where the Canadian citizen resides outside British Columbia. Thus the complainant was entitled to have a B.C. friend who was not a relative apply for a permit to accompany him on their hunting trips in B.C.

The Ministry readily acknowledged that its publication was inaccurate and apologized for any inconvenience suffered by the complainant. He was invited to have one of his friends re-apply for the required permit. Future editions of the "Hunting and Trapping Regulations Synopsis" will be corrected to accurately reflect the intent of the legislation.

Ministry of Finance and Corporate Relations

Resolved	125
Not resolved	-
Abandoned, withdrawn, investigation not authorized	15
Not substantiated	45
Declined, discontinued	20
Inquiries	34
Total number of cases closed	239
Number of cases open December 31, 1990	41

The Ministry of Finance and Corporate Relations holds diverse responsibilities, including the traditional duties of administering taxation statutes, collecting revenues, investing and borrowing money, issuing cheques to suppliers, and administering the payroll for tens of thousands of public servants. On the Corporate Relations side, there are regulatory responsibilities for the insurance and real estate industry as well as trust companies and credit unions, in addition to the incorporation of companies and societies and the maintenance of the central and mobile home registries. Also, the Ministry is responsible for administering the provisions of the *Public Service Act* and developing and administering policies for public service management. The complaints we receive usually relate to money.

She taxed the goods, forgot the services

For an extra fee, a T-shirt printing business provided layout and design services. Tax was then charged on the price of the shirt but not on the services. Although this was before the GST, the provincial sales tax was required to be levied on certain services - including the type provided by the T-shirt business.

After 12 years in business, the firm was faced with its first Ministry of Finance audit. The result was a hefty charge for back taxes on the design services, plus penalty and interest.

The owner, who said she had been unaware that the design services were taxable, offered to pay the amount by means of nominal monthly payments within the limited cash flow capabilities of the business. This proposal was considered unacceptable by the Ministry in view the policy requiring expeditious collection of unremitted tax.

An impasse resulted, and the owner sought our assistance. She argued that the Ministry's policy was unnecessarily rigid and most unreasonable in the present circumstances, which resulted from an honest oversight and considerable tardiness on the Ministry's part in conducting an audit of a business that had been in operation over a decade. In addition, the complainant pointed out, the amount owing was an insurmountable burden to bear for a small business in financial difficulty.

It was clear that the Ministry was within its rights to demand quick payment under its authorizing legislation. As with other legislated requirements, the onus lies on businesses to determine what types of transactions are taxable. The Ministry maintains an active program to provide tax information through printed circulars and through availability of advice from Ministry staff and, in rural areas, the offices of government agents. As for the complainant's comment with regard to the delay in auditing, audits are strategically conducted, and it is both unnecessary and also impractical, given staff limitations, to conduct audits frequently.

In short, ignorance of the law was no excuse. Nevertheless, in view of the difficult circumstances facing the complainant, we suggested that the Ministry consider adopting a somewhat more flexible position in this instance, on confirmation of the complainant's limited cash flow. The Ministry agreed to do so, and a repayment plan within the complainant's capabilities was approved.

Tax audit produces bitter surprise

The operator of a welding shop in the interior of British Columbia was surprised to learn, as a result of a Ministry audit, that he owed over $6,000 in provincial social services tax applied on his labour. He told us that he knew of no other firms in the same industry which charged tax on labour, and said he had even been advised in a transaction with another Ministry, which was purchasing certain fabricated items from his shop, that the Ministry did not pay tax on labour.

The complainant's objection was both simple and eloquent: "If I manufacture a new door for an old wood stove, am I manufacturing a door or repairing a stove?" If it was truly the latter, the complainant would not be obliged to collect tax on the value of repairs. If, however, he was in fact manufacturing and selling a door, he was liable to pay a manufacturer's tax of 6 percent on the value of the labour component in the production of the door.

While the complainant was upset at the suddenness and amount of the assessment, we could not find that the Ministry had erred in applying the requirements of validly enacted tax legislation. We reminded the complainant of the old saying that "there is no equity in a tax statute". The complainant believed that the Ministry could have done a far better job of explaining in previous years the application of and necessity for collection of the social service tax on labour for manufactured items. While there might have been some merit in the complainant's contention, it was not a sufficient basis upon which to substantiate his complaint.

Lured to the west by the money

A computer networking specialist alleged that she had been induced to leave her employment with a major accounting firm in Toronto by representations made by an employee of the Ministry of Finance and Corporate Relations. In essence, she said, she had been promised three years' continuous consulting and installation work for the Ministry (and other ministries) at a rate of $60 per hour, which equates to an annual salary in the $100,000 range.

Investigation of this complaint involved personal interviews with several managerial level representatives of the Ministry, as well as with an extensive list of individuals referred to this office by the complainant; the majority of these individuals were the complainant's former co-workers at the Toronto accounting firm. Also interviewed were two independent systems consultants to which the complainant had been introduced as a courtesy, shortly after her relocation to Victoria, by the person in the Ministry with whom she dealt directly. This Ministry representative stated that these introductions were made to assist the complainant in obtaining the necessary professional contacts to establish herself in Victoria and on the west coast generally as a computer networking specialist-consultant.

Upon completion of the investigation, we found that we were unable to substantiate the complainant's allegations. The balance of evidence indicated that the complainant had been hired to arrange software installation for a pilot project only. Although the Branch of the Ministry with which the complainant dealt was enthusiastic and optimistic about the potential for computer networking in that and other ministries, no guarantees had been given to the complainant that available work would extend beyond the assembly of the pilot system. Ministry representatives explained that multi-year contracts are rare, and are generally issued only after an intensive competition by way of public tender.

Through the issuance of several contracts, the complainant had obtained the equivalent of approximately eight months' full-time work. Permanent employment had been offered to her, but at a fixed salary considerably lower than what she believed she could earn as a consultant, and such employment was refused. On the basis of these investigative findings, the conduct of the Ministry could not be criticized. The complainant's situation, while unfortunate, was in no way related to any identifiable instances of administrative unfairness.

Twice-taxed car not such a deal

A man purchased and paid tax on a car in Ontario, then moved it to B.C., where he was asked to pay sales tax again. His plea that such double payment was unfair brought the Ministry's reply that he was disqualified from tax exemption for "settler's effects" because he had not owned the car for at least 30 days in Ontario.

We knew that the complainant automatically qualified for exemption from the B.C. tax under a reciprocal agreement between B.C. and Ontario that applies to vehicles removed within 30 days of purchase. This was drawn to the attention of the Ministry, which acknowledged an oversight and arranged for the immediate return to the complainant of the 8 per cent Ontario tax upon payment of the B.C. 6 per cent tax.

Citizenship requirement voided

In 1989 the Supreme Court of Canada ruled that section 42 of the B.C. *Barristers and Solicitors Act*, requiring persons practising law in British Columbia to be Canadian citizens, was in contravention of section 15 (the "equality" section) of the Canadian Charter of Rights and Freedoms.

After this decision became public, we received a complaint from a professional association about a provision in the *Public Service Act*. This statute, which addresses the manner in which individuals are appointed to positions in the provincial public service, also contains a provision that requires appointees to be Canadian citizens, although the wording in the Act leaves some room for exceptions. The complaining association was of the opinion that, in view of the SCC decision, this provision must violate Charter rights as well.

On the face of it, the complaint appeared to have merit, so we met with representatives of the Government Personnel Services Division of the Ministry of Finance and Corporate Relations to discuss the matter. Ministry officials submitted that, regardless of whether the complaint was justified, it must be left to the legislature to change the law or to the courts to strike it down.

To determine whether such a recommendation for legislative change might be advisable, we conducted research and developed a legal opinion on the matter. However, a formal recommendation was made unnecessary when the Supreme Court of British Columbia, in a decision handed down in February 1990, concluded that the section in the *Public Service Act* that requires appointees to the public service to be Canadian citizens is inconsistent with section 15 of the Canadian Charter of Rights and Freedoms and, pursuant to s. 52(1) of the *Constitution Act*, is of no force or effect. The result is that applicants for public service positions no longer have to be Canadian citizens.

Not the fault of Canada Post

The story was a sad one. A man told us that because he had not been notified of provincial taxes owing on rural property he owned, the property had been forfeited to the Crown. By the time he learned that the forfeiture had occurred, the time limit for making application for return of the property had passed. He considered the fact that property which he owned had been forfeited without notice to him to be unfair in the extreme.

It was fortunate for the complainant that the property had a value which was more personal than financial. It was primarily as a matter of principle that he was seeking to understand the system which could have caused such an injustice. His intention was to attempt to ensure that such an event would not happen to him (or others) again.

Upon investigation, this office found that the forfeiture occurred according to law. The problem was that the complainant had moved, and the original address in the possession of the British Columbia Assessment Authority was no longer valid. The complainant had forwarded a change-of-address notice to the Improvement District to which he paid taxes, but remained unaware of his obligation to pay provincial property tax. Attempts by the Property Tax Branch to locate the complainant for the purpose of serving a notice of forfeiture had been unsuccessful. The property thus forfeited with passage of time.

This office reviewed with the Collections Branch the complainant's file, and was informed that the notes made by the collection agent did not reveal whether local government had been contacted in an effort to locate the complainant. The forfeiture occurred in 1986, and it was approximately two years after this time that the Property Tax Branch initiated the use of a checklist to record on file the individuals or organizations contacted in an effort to locate defaulting taxpayers.

We suggested to the Property Tax Branch that they might initiate some program aimed at bringing provincial property tax obligations to the attention of those who purchase rural property. The Branch agreed that such an initiative would be useful and has begun production of informational brochures to be distributed to the many groups associated with property conveyancing and to be made available as well through Land Title Offices. The complainant was informed of this commendable effort by the Real Property Taxation Branch and his file was closed.

Doubt about loan responsibility

A man sought the assistance of this office when the Ministry of Crown Lands gave notice of its intent to cancel the lease of agricultural Crown land upon which the complainant and his wife resided and farmed. The complainant had held the lease by way of a corporation until the early 1980s, when he assigned the leasehold to his wife. After the assignment, the wife negotiated an *Agricultural Land Development Act* (ALDA) loan in which she was designated as the farmer and her husband was designated as the contractor. Under the terms of the loan agreement, the husband, as contractor, would receive from the government a sum in the order of $25,000 for clearing and preparing a number of acres on the lease property for crop cultivation. Within a year, the clearing was performed and the complainant was paid by the province.

The complainant and his wife then elected not to pay any portion of the principal of the loan for three years, paying interest only. Approximately a year later, the wife assigned the lease back to her husband. The Ministry of Agriculture and Fisheries, which administers ALDA loans, then requested an acknowledgement of joint responsibility for the loan, as the husband was taking legal possession of land which had been improved by way of the clearing which was financed by the loan. The husband acknowledged joint responsibility for the debt by signing the document.

About two years later, a new lease was issued to the husband to replace the former lease; the replacement offered a number of advantages by way of recently introduced Crown policy which offered superior terms with respect to rent requirements and the optional purchase of leased land. By this time, the complainant's wife had declared personal bankruptcy and the administrator of the bankrupt estate had advised the Ministry of Crown Lands that it had no interest in the leased property. Because the expected loan payments were not forthcoming, the Ministry of Agriculture and Fisheries issued a certificate under the *Agricultural Credit Act*, directing the local Surveyor of Taxes to apply the unpaid portion of the loan to the provincial property tax roll. Thereafter, the debt was treated as taxes owing. Because the Ministry of Crown Lands in its lease agreement requires that all applicable taxes on the land be paid, and because such taxes were outstanding in the complainant's case, steps were taken toward cancellation of the lease. The complainant argued that this was unfair as the ALDA debt was not his but his wife's.

Upon investigation, this office disagreed. The complainant's voluntary assumption of joint responsibility for the loan was well founded, as the legal consideration (what he received) in exchange for his acceptance of indebtedness was legal possession of improved land - land which had been improved by the financial assistance of the provincial government through the ALDA loan. In addition, section 4.2 of the *Agricultural Credit Act* permitted the placement of the ALDA loan against the property tax roll in situations where an "occupier" has failed to make the necessary payments as contemplated by the loan contract. In this instance, as the wife remained an occupier of the property, it was permissible for the Ministry of Agriculture and Fisheries to issue a certificate for the *Surveyor of Taxes*.

Even though the property was in the husband's name, both in the lease document and as the registered "owner" of the property as recorded by the B.C. Assessment Authority, no injustice was done here. The husband could not escape the impact of lawful collection action which naturally had a significant effect upon both him and his wife. The situation was unfortunate but not unfair.

Another financial disaster?

In late 1989, this office received complaints from aggrieved investors in the now defunct Tower Mortgage Ltd. Due to the involvement of this office in the review of regulation of the Principal Group of Companies by the Office of the Superintendent of Brokers, described in Public Report No. 19, the complainants sought our assistance to determine whether the administrative negligence which was noted in our analysis in Public Report No. 19 existed also in the Superintendent's regulation of Tower Mortgage.

Our investigation began with a request to the Ministry for a full chronological review of events surrounding the demise of Tower Mortgage, including notes of all regulatory action taken, with access to supporting documents as necessary.

The information received from the Ministry showed that Tower Mortgage Ltd.'s operations began in British Columbia in 1980, although the company had been in existence in Alberta since 1966. Tower received a one-year conditional registration as a security issuer under the *Securities Act* in May 1980. In April 1982, the company received a one-month conditional registration under the *Securities Act* as a broker dealer. This was renewed on May 1, 1982, for one year, and again on May 1, 1983, for two years.

On April 22, 1983, the Alberta Securities Commission issued an interim cease-trade order under the Alberta *Securities Act* against Tower Mortgage Ltd. The Alberta Commission had noted a serious cash deficiency due to the fact that a significant portion of the assets of Tower Mortgage consisted of an investment in a subsidiary company which held large real estate holdings in Alberta, and had suffered major losses due to the downturn in values in the Alberta real estate market at that time. The British Columbia Superintendent of Brokers received a copy of the Alberta cease-trade order on April 25, 1983, and a temporary cease-trade order was issued in B.C. on the same day. The cease-trade orders in Alberta and British Columbia marked the end of operations of Tower Mortgage.

Although the complainant had included allegations of misrepresentation regarding the security of the investment, we found that this concern was difficult if not impossible to substantiate. The Superintendent of Brokers had received only one complaint regarding misrepresentation by an agent of Tower Mortgage Ltd., and this allegation was never made the subject of a hearing because the agent in question voluntarily left the industry prior to the hearing. In addition, notwithstanding any exaggeration by the agent, the primary vehicle for disclosure is the prospectus, issued under the *Securities Act* and reviewed for compliance with the Act by the Securities Commission. This in itself was a significant distinction between the Tower scenario and Principal Group, whose investment contract companies were controlled by the *Investment Contract Act*, which has since been repealed, with investment contract provisions being rolled into an amended *Securities Act*.

We found also that the regulatory action taken against Tower was as timely as could ever be hoped for from a regulatory agency. The cease-trade order, perhaps by coincidence, was issued in Alberta and followed in B.C. within 30 days after the financial reports became overdue (there is a 90-day grace period for preparation and filing). This swift action against Tower as a result of Alberta real estate losses can be contrasted with the actions taken in the Principal matter, where the licences of companies which had similar investments in Alberta real estate and sustained similar losses in the early 1980s were not lifted until July 1987. Consequently, there was no factual basis upon which this office could declare the Office of the Superintendent of Brokers to have committed any acts of administrative negligence in connection with the regulation of Tower Mortgage Ltd. The complainants were advised that we were unable to substantiate their concerns.

No money for the mortgage

A family purchased a house with a 10 percent down payment and two mortgages. The first mortgage was held by a credit union; the second, representing 20 percent of the purchase price, was a British Columbia second mortgage acquired under the provisions of the *Home Purchase Assistance Act*.

Two years later, following a significant decrease in the family income, both mortgages were in arrears. The family relocated in an attempt to find employment, leaving the house vacant.

In 1989, the province reached an agreement with the Bank of Montreal that allowed for the sale of the administration of second mortgages that were in good standing with the bank. Any mortgage falling into arrears for 90 days was returned to the government for follow-up action, including foreclosure, if necessary.

Having elected not to file for bankruptcy, the family asked us for information about what would happen if their obligation under the second mortgage was disregarded. We explained the applicable legislation and policies. It seemed clear that the preferable option was to consult openly with and take direction from both mortgage holders, effecting sale of the property, discharging the mortgages to the extent possible from the sale proceeds, negotiating a repayment plan and accepting financial loss. This option was pointed out to the family.

Ministry of Forests

Resolved	26
Not resolved	-
Abandoned, withdrawn, investigation not authorized	25
Not substantiated	22
Declined, discontinued	15
Inquiries	6
Total number of cases closed	94
Number of cases open December 31, 1990	59

Robson Bight, Tsitika, Clayoquot Sound, Stein Valley, Stikine, Carmanah, Walbran, Robson Valley - all of these names evoke images of heated emotions, conflict, and competing claims by opposing groups, each presenting heartfelt demands that appear irreconcilable. As one senior forest company executive put it, "timber management used to be a fairly private matter between industry and government; now, the multitude of competing and concerned interests indicates that a young forester should probably be learning more about people than about forests."

Advocates of "new forestry" would likely suggest that we already know much more about people than about the complex ecosystems called forests. Competing visions abound when the future of Crown forests is considered: Whose technical argument is right? Who really owns the forests? What part should local communities play in forest management? To what extent should the general public dictate the future of forest policy in the province? What does integrated management really mean and how can it be practised? To what extent can we rely on the information which we have about B.C.'s forests? Is this information adequate for an informed public debate about competing priorities for forest use? To what extent do other Ministries influence policy at the field level? Are experiences in other jurisdictions applicable to this province? Is forest management in this province open, accessible and fair to all affected parties? Is title to the land itself in dispute?

It is clear that public awareness of resource management conflicts, and the complex issues arising from these conflicts, continue to increase. This has resulted in higher numbers of complaints to this office about Ministry policies relating to conflict resolution, "multiple use" of forest lands, integrated resource management, access to information, and the role of the public in helping to shape both general policy and area-specific decisions about timber harvesting, silviculture, old-growth preservation, and watershed protection and management.

This office is currently involved in investigations relating to most of the issues mentioned above. In addition, we are pleased to be among the agencies consulted by the Ministry in the development of new planning processes for forest land management in B.C. We will continue to offer an independent perspective concentrating on fairness in administration and building on the principles of fair resource management articulated in Public Report No. 15 and condensed in our 1988 Annual Report ("Integrated Resource Management: The Issue is Fairness") at pages 30-32.

Log export opportunity lost

The last day of June was a day dreaded by a company in the business of exporting logs. This is the expiry date each year of orders-in-council authorizing log exports under prescribed conditions and setting a maximum volume for the year.

In the first week of June 1990, a representative of the company complained to our office that the company had lost a log export opportunity at the end of June 1989 due to an unrealistic and unfair log-marking requirement imposed by the Ministry. The requirement was that all logs intended for export be hammer-marked and be in a form suitable for immediate transport out of the jurisdiction - generally meaning either loaded on a ship or in boom form suitable for immediate towing out of Canadian waters. Some companies striving to meet the deadline established by expiry of the order-in-council have towed booms into United States waters so that ship-loading can take place without worrying about time constraints imposed by the Ministry.

Upon investigation, we were unable to substantiate the complainant's concerns. Ministry documentation revealed that the complainant company had been warned on a number of occasions about improper or substandard log-marking practices, and documentation established that the complainant's firm was not in compliance by any standard, even if a "flexibility factor" was considered. We also made the observation that, having lost a certain volume of log export opportunity in 1989, which was subsequently utilized by way of a companion OIC for 1989/90 - each OIC having a 10,000 m^3 volume ceiling - the complainant's firm knew that the available volume under the later OIC would be reduced. For these reasons, we were unable to recommend any relief to the firm.

Putting a value on "value-added"

An executive with a timber products manufacturing company alleged that the Ministry of Forests, in administering the Small Business Forest Enterprise Program (SBFEP), had unfairly denied his company two timber sales. The volume of timber from these two sales was seen by his company as the key to a capital expansion program which would create additional employment in his area.

In reviewing the complaint, we noted that the Ministry acted as the technical information source to evaluate and mathematically quantify various aspects of competing applications for the timber sales. The primary criterion for comparing applications was known as "value-added", meaning the benefits to the provincial economy likely to be created by timber sold to the winning bidder. In reviewing the manufacturing proposals submitted by bidders for the timber sales, the Ministry would take the bidder's value-added data and rework it according to standard figures for timber costs, physical plant costs, labour costs, etc. The objective was to provide a measure of consistency for the comparison of competing bids where self-interest is to be expected.

The complainant was convinced that his firm's value-added figures were superior to those of any other bidder for the timber sales. When this office reviewed the Ministry's summaries of the proposals and the briefing memos to the Minister, the objective superiority of the complainant's value-added figure was confirmed. However, the complainant's value-added projection for the proposed manufacturing operation was contingent upon the award of *both* timber sales: when the timber sales were analyzed individually, rather than together, a different picture emerged. The complainant's value-added figure dropped significantly. In addition, it was noted as a series of observations for the Minister's consideration that the awarding of sales to certain other companies would create additional benefits, including higher (relative to the complainant's proposal) local employment levels, greater industry diversification by introduction of new and separate manufacturing entities, and higher levels of capital investment. The Minister, noting the relative advantages of separate sale awards, chose not to pursue the option of awarding both sales to the complainant's firm.

The complainant, as a business person, was understandably upset by the decision, yet there was nothing in the process which this office could point to as providing objective evidence of unfairness. We were therefore unable to substantiate the complainant's concerns.

High standards for log scalers

The complainant contacted this office in October 1989, concerned about both the privatization of log scalers in B.C. and the apparent inequality of employment opportunity which a privatized system might create.

The complainant's principal concern about the privatization program related to conflicts of interest. Log scaling is the primary data collection process used to calculate stumpage revenue payable by a logging company to the Crown and to determine compliance with allowable annual cut. The complainant claimed that where a scaler is employed by the company which is presenting the data to the province, there is a direct conflict of interest which may prove irresistible for some corporate operators.

Upon investigation and discussions with Valuation Branch of the Ministry of Forests, this office disagreed with the complainant's contention. The province continues to employ check scalers, who monitor and review the performance of private scalers to ensure that the scaling data presented is within allowable tolerances, given that there is always a degree of estimation inherent in scaling practice. At the moment, all privately employed scalers, whether operating independently as part of a consulting scaling firm or as employees of logging companies, hold the classification of "official scaler", meaning that each scaler has demonstrated over at least a five-year period an acceptable record of scaling accuracy, in order to establish a track record. The Valuation Branch suggested that the check scalers, with their considerable experience, as well as the resources of the Ministry to rely upon, have been exposed at one time or another to nearly every scaling scam known to the industry. In addition, the scale can only be misrepresented to a limited degree before the variation becomes patently obvious, and there are other cross-checking mechanisms available by which the accuracy of the scale can be determined.

With respect to the complainant's second contention that privatization had resulted in an inequality of opportunity for scalers, the Valuation Branch agreed to the extent that simply being a "licensed scaler" under the *Forest Act* may not be adequate qualifications to get a job as a scaler. A licensed scaler is someone who has simply taken the required course of instruction and passed the necessary examinations. A number of years' experience following the licensing is necessary before one can receive the designation of "official scaler" which is the benchmark that the Ministry utilizes for allowing scaling for revenue purposes to take place. If all scalers employed must be "official", then the question arises: how does a licensed scaler acquire the necessary experience to become an "official scaler"? At the time we investigated this matter with the Ministry, the Valuation Branch was in the preliminary phase of developing a process similar to apprenticeship or a "buddy system", by which licensed scalers could obtain the necessary experience under the supervision of official scalers. This information was passed on to the complainant, along with the observation that his views were appreciated and respected by the Ministry.

Buy B.C.? Only if the price is right

The complainant operated what he described as the only horse trailer manufacturing business in British Columbia. When the Ministry of Forests needed a horse trailer, the complainant thought they would come to him. Instead, the Ministry purchased the trailer from a company in Alberta. The complainant said this was unfair because provincial tax revenue should be spent in a way which benefits British Columbia businesses.

We concluded that the complainant's concerns could not be substantiated. The Ministry of Forests had researched its precise needs for the design of a horse trailer and had submitted the specifications to the B.C. Purchasing Commission, which then invited qualified manufacturers to bid on the supply of a trailer. The complainant's company had been invited to participate in the bidding process, and had submitted a bid that was about 50 percent higher than that submitted by the Alberta company. In addition, the B.C. company trailer specifications varied somewhat from that desired by the Ministry of Forests, while the Alberta company was able to comply exactly.

With respect to the complainant's contention that preference should be given to British Columbia companies, this office considered such policy to be a political matter dealing with expenditure of public funds, and therefore beyond our jurisdiction. However, we noted that the four western provinces had recently signed a "western accord" in which it was agreed that provincial purchasing for goods, services, and construction contracts would not be limited to intra-provincial enterprises but would be open to competition from any business entity in the provinces represented by the agreement. We passed this on to the complainant for his information.

When in doubt, ask

A farmer who was clearing his land arranged to sell the felled timber to a local sawmill. He applied for and received an official timber mark from the Ministry, but no instructions for marking were given. After determining what he thought to be correct marking procedure from staff at the mill, the farmer placed his timber mark at the four corners of each load.

The Ministry seized the logs for improper marking, citing the requirement to mark each log unless a marking exemption had been provided by the district manager. This requirement is important, as it is the only means the Ministry has to tell with any certainty the origin of timber to ensure stumpage is paid and to deter log theft. Nevertheless, the farmer considered the $250 fine and the $100 handling fee to be high-handed and without justification, and asked us to consider the matter.

After discussing the case with us, the district manager decided to rescind the $250 fine for two reasons. First, there was no need to protect public revenue, as the logs were privately owned. Second, although the onus would ordinarily be on the seller of the logs to seek instruction from the Ministry on marking procedures, consideration was given to the fact that the farmer did not ordinarily make his living in the forest industry and was quite unfamiliar with procedures in the business. The farmer recovered his logs by payment of the $100 handling fee, and a marking exemption was issued by the Ministry.

Low wages guarantee low bid

A man complained that the Ministry of Forests should not have allowed a subsidized organization - an operation of the Corrections Branch of the Ministry of the Solicitor General - to bid on publicly tendered contracts. He contended that the nominal wages paid to the inmates who furnish labour to the program provide the organization with a virtually unbeatable competitive advantage when bidding against private sector businesses in which the proprietor and his or her employees must earn a living wage.

Upon investigation, this office agreed with the substance of the complainant's concerns. On discussing the matter with the Ministry of Forests, we made reference to a policy established by the B.C. Purchasing Commission by which publicly subsidized organizations are limited to making application to participate in a certain number of purchase contracts, the dollar limit of which is established by the Commission on an annual basis. These organizations are not otherwise allowed to compete on publicly tendered contracts.

The matter was resolved when the Ministry of Forests advised us that a policy was being developed to restrict subsidized organizations from competing against non-subsidized businesses on public tender contracts.

Landslide alert

A house beside a mountain slope was declared unsafe for habitation after a geotechnical study commissioned by a Regional District concluded there was a high risk of landslides. As a result, the tenants had to move out, and the Provincial Emergency Program paid for a weekend's accommodation, after which the tenants found another place to live. The owner of the property, now in possession of an empty house, sought corrective action or compensation, without success.

It was evident that the landslide risk had, in large part, been the result of human activity. The neighbouring property, now owned by a trout farmer, had formerly been in the hands of a logger, who in 1985 applied to the Regional District for approval to log his land. That approval was granted after a consultant's report to the Regional District indicated that the steeply sloped terrain could be safely logged if certain standards related to road-building, provision for drainage, and logging methods were met. The logger agreed to meet these conditions, and the permit was issued in 1986.

Eight months later, the consultant inspected the logged area, found that the conditions had not been met, and documented the resulting hazards - most notably the landslide risk. As the logger had trespassed on Crown forest land, the Ministry of Forests instructed him to cease operations, but no corrective work was ordered. The logger departed the scene, and his land was repossessed and sold to the trout farmer.

When the owner of the property that had been declared unsafe sought compensation, the Regional District denied liability. The trout farmer had no knowledge of the unsafe condition of the steep slopes, his sole interest at the time of purchase being in the flat, developable part at the foot of the slope.

After he bought the land, the Ministry of Forests obtained from him permission to use a road on his land in order to get up the mountain side to retrieve the timber that had been cut in trespass.

The owner of the unsafe property, having had no luck in his efforts to get compensation from the Regional District, then went after the Ministry of Forests, believing that its activities to retrieve the timber might have contributed to the hazard. The Ministry dismissed this claim, noting that the Regional District's consultant had documented the landslide hazard before the Ministry was ever involved. There now followed threats of litigation, and the owner of the tenantless house sought our assistance.

As it seemed clear that the actions of the Ministry of Forests had taken place after the hazard was created, we concluded that any involvement it might have had in creation of the hazard would have been minimal. Nevertheless, we discussed the matter with the Ministry, which agreed to take equipment onto the mountain to deactivate the road and lessen the hazard. Work would be done on the zig-zagging road made by the logger to return the land as nearly as possible to a natural state that would ensure clear passage for drainage streams and restore the stability of disturbed soil and rock. The trout farmer would pay for that area of work on his land only. The Regional District agreed to then have the geotechnical study done to proclaim the area safe and allow occupancy of complainant's rental home.

There remained one potential problem. What would happen if the geotechnical study required more work to further reduce the landslide risk? With the road essentially dismantled, there would be no means of transporting machinery to the site. The logical solution was to have the geotechnical engineer on site when the work was being done by the Ministry of Forests. However, this expense was deemed too costly by the Regional District, which resorted to its position that it held no liability.

Our office has no jurisdiction over actions by Regional Districts, which are named in an unproclaimed section of the Schedule to the *Ombudsman Act*. When we receive complaints against municipalities and Regional Districts, we work through an established procedure with the Municipal Investigations division of the Ministry of Municipal Affairs. In this case, we submitted a full report to that Ministry, with copies to all other parties, suggesting that the Ministry's solicitor provide a legal opinion regarding the Regional District's responsibility for not insisting that the logger adhere to the consultant's conditions after his operations began.

In the interim, the Ministry of Forests and the trout farmer went ahead with the plans to eliminate the landslide risk, with the trout farmer keeping an account of his expenses in case reimbursement could eventually be obtained from the Regional District or from the logger who had created the hazard in the first place.

Optimistic bidder sunk by stumpage

A husband and wife approached this office concerned about their contractual stumpage obligations to the Ministry of Forests. The debt to the province was now in the collection stage, and it was apparent that legal collection of this debt would put the husband's company out of business. He and his wife thought this result was inappropriate and unfair.

Upon investigation, this office determined that provincial policy, while having an unfortunate impact in the complainant's case, had not been directed specifically towards the complainant's company and could not in that sense be described as unfair. The complainant and his employees were "market loggers", cutting and selling timber as market conditions dictated; in this instance, the complainant was the successful bidder in a timber sale competition which the complainant had entered in order to provide work for his employees until activity under a contract to a major sawmill resumed. The complainant believed that the sale would yield a certain volume of timber, a portion of which would be of sufficient quality for export - and which the provincial government would approve for export. As it turned out, the complainant's optimism was unfounded. The total volume of timber available in the sale turned out to be less than that anticipated, even though the provincial government makes no warranty as to the accuracy of its timber cruises.

Shortly after the complainant won the bidding competition, the provincial export policy was changed, significantly increasing the "tax in lieu of manufacture" on export logs. Logs which the complainant had hoped to export were instead purchased by other mills as permitted under the timber export policy, which gives domestic mills first priority in purchasing timber which would otherwise be declared surplus. The complainant was now faced with paying the price of his optimism: his original stumpage bid had been over $36 per cubic metre of wood. The amounts realized on the sale of timber logged from the sale did not yield a cash flow nearly large enough to attempt to pay this level of stumpage.

This office could not fault the provincial government for policies which had a negative impact on this complainant in particular, as they were apparently introduced in good faith with the intent of aiding the forest industry and all its various components as a whole in British Columbia. To grant the complainant special relief by way of relaxation of administrative requirements or forfeiture of contractual obligations would be to set a precedent for every other forest company in the province, and would seriously affect public revenues.

However, we reminded the complainant that under section 16 of the *Financial Administration Act*, application could be made to the Lieutenant Governor in Council for relief of a debt owed to the province. The complainant was also advised that this power is very rarely exercised by cabinet, and only in the most unusual and worthy of cases. Nonetheless, as the complainant had made every effort to comply with the terms of the sale, and had been financially injured by circumstances beyond his control, this office suggested that he could at least attempt to obtain relief under section 16. As this was an inherently political discretionary remedy, this office could make no further representations on behalf of the complainant. He would be on his own to pursue his appeal under the *Financial Administration Act*.

Fine contractor, poor employer

A man who wanted to do certain forestry field work made an inquiry to a District

Office of the Ministry of Forests about the reputation of an employer whom he hoped would hire him. The Ministry official involved, apparently unknowingly acting against Ministry policy about release of such information, stated that the contractor had a first-class reputation and enjoyed the privilege of having to file a smaller performance bond than most other Ministry contractors.

The man was duly hired by the contractor, only to find out that, although the contractor had a good reputation for getting work done to the Ministry's specifications, his relations with his own employees were far from satisfactory. The man remained unpaid for the majority of his work done, and sought assistance from Employment Standards Branch. The results of that exercise were disappointing, and the man was ultimately able to obtain a portion of his wages only by constantly pleading with the contractor. When he learned after the fact that certain Ministry personnel knew of the contractor's poor reputation for fair dealing with his employees, the man complained to this office, contending that he should have been warned of that fact.

Upon investigation, it turned out that the information obtained by the complainant from Ministry officials on both occasions violated the Ministry's policy on release of information concerning contractor performance or reputation. Nonetheless, this case raised an interesting question: to what extent can, or should, a Ministry force its independent contractors to comply with the provisions of the *Employment Standards Act*? Representatives of this office subsequently met with officials of the Ministry of Forests and of the Employment Standards Branch to make informal inquiries about the prospect for linking an information data base between Employment Standards and the Ministry, to be combined with contractual provisions requiring the contractor to comply with the provisions of the *Employment Standards Act*, and empowering the Ministry to impose contractual penalties for failure to observe that requirement. Practical and legal difficulties have not yet been overcome; however, this issue remains one of a number of contracting issues ranging across the Ministries of the Crown which this office is examining on an ongoing basis.

Debt assignment brings delays

A man who had performed two tree-spacing contracts for the Ministry of Forests asked us to find out why he hadn't been paid, as it was several weeks since he had submitted his invoices, and his workers were anxious to get some cash in time for Christmas. Each of the contracts had a value of about $10,000.

A call to the district office that had issued the contracts made it readily apparent why the complainant hadn't received the money. He had provided a general assignment of book debts to a company to which he owed money, and the holder of the assignment had forwarded a copy to the Ministry of Forests. The result was that all moneys henceforth owed by the Ministry to the complainant would be sent instead to the creditor until a release was received.

The complainant told us that his debt to the creditor had been about $7,000, and the first cheque from the Ministry should satisfy it. The Ministry advised us that its policy was to attempt to make payment within 30 days of being billed, but it was now almost two months since the invoices had been submitted. The apparent reason for the hold-up was that the district office had been slow to forward the invoice to the Ministry of Finance for payment, and the process was somewhat delayed in that Ministry by the fact that an assignment of debts was involved and required review.

When we contacted the company holding the assignment, we learned that the first payment of $10,000 had just been received and that the complainant would very shortly receive the balance left after satisfaction of the debt. However, the creditor was unaware that the Ministry of Forests owed the complainant another amount that would be forwarded to the creditor because the Ministry, having notice of a general rather than a specific assignment of the book debts, had no means of knowing how much was owed. The company agreed to fax a release immediately to the Ministry of Finance, and shortly afterwards the complainant received the cheque in payment for fulfilment of the second contract.

Injunction preserves culturally modified trees

It was a happy day for a man who landed a contract to haul timber for a forest licensee on the Queen Charlotte Islands. The contract was so lucrative that the man borrowed money from his mother to buy a $60,000 logging truck for the contract.

Then came the bad news. Just as logging operations were about to begin, the Haida Nation obtained an injunction to prevent trees being felled on the land. According to the Haida, over 100 culturally modified trees were growing on the area covered by the licence. The Ministry had identified a handful, but not enough to preclude logging around them. Culturally modified trees, commonly known as CMTs, are usually western red cedars that show clear evidence of having been used by previous generations of Haida. For example, slabs were removed from the growing trunk to be carved into planks for longhouses or boiled for bentwood boxes. Bark might be stripped off to be woven into baskets or clothes. In either case, the tree was left to continue to grow for the use of future generations. In recent years, the Haida have sought to preserve many of these culturally modified trees that represent a living link with the activities of ancestors a century or more ago.

The owner of the logging truck was sympathetic to the goals of the Haida who had obtained the injunction. He was less sympathetic to the Ministry of Forests, which he said had a responsibility to determine the numbers of CMTs on land near Haida communities before it issued licences to harvest timber. The result of the Ministry's failure to do so in this case, he said, was a major loss for him, particularly as he had to convert the truck to other uses and found himself unable to pay back to his mother the money he had borrowed. He believed that the Ministry owed him some compensation for its negligence, and he asked us to conduct an investigation.

A call to the Ministry's district office revealed that the complainant was not alone in taking the Ministry to task over the events leading to the injunction. The licensee who had let the contract to the complainant had filed a statement of claim to initiate a lawsuit against the Ministry. Generally speaking, it is the practice of this office, in applying the provisions of the *Ombudsman Act*, to decline to investigate complaints if the same or related parties are presenting the same issues for the consideration of the court. That being the case in this instance, we advised the complainant that it would not be appropriate for our office to investigate his grievance; instead, we suggested that he consider joining himself as a party to the action.

Ministry of Health

Resolved	165
Not resolved	-
Abandoned, withdrawn, investigation not authorized	32
Not substantiated	91
Declined, discontinued	128
Inquiries	66
Total number of cases closed	482
Number of cases open December 31, 1990	158

The Ministry of Health's community-based services generate a steady flow of complaints. Two issues that continue to be the subject of complainants' concerns are services to remote communities and waiting lists for specialized services such as speech pathology and occupational therapy. Often these concerns reflect the Ministry's difficulties in finding and retaining sufficient skilled staff to meet the communities' growing service needs.

Over the past year the Ministry has developed protocols and programs for many of the areas where there were real or perceived gaps in service, or where clients were experiencing difficulties in "managing" service by multiple agencies. Examples of such gaps discussed with the Ministry in 1990 are the payment problems for ancillary services to residents of long-term care facilities whose sole income is GAIN, and the problem of interprovincial transfer of hospitalized persons.

A significant new service is that the Ministry will now accept applications for extended care facilities from people outside B.C. This means that a B.C. resident permanently disabled while on holiday in Ontario or an elderly woman in care in Alberta whose family lives in B.C. may now apply for transfer to a facility close to "home".

Six years' unnecessary MSP payments

A self-appointed seniors' counsellor called us on behalf of a non-English speaking 80-year-old man who lived in a small community in central B.C. For years the man had been paying his MSP premium at the bank and saying he could not afford it. Bank staff had not helped the man, and he did not know where else to go as there was no government agent in town.

When the counsellor became involved, the man had been paying full premiums for six years despite the fact that he was eligible for a 95 percent subsidy, because he did not know the subsidy existed. The counsellor had written to MSP, which calculated a rebate for the previous 18 months but would not rebate the full six years. The counsellor wrote to us saying he thought this was unfair.

When we reviewed the man's MSP file we established that MSP had given the maximum rebate possible, because the *Medical Service Act* only allows premium adjustments in the current or immediately preceding year. The larger problem was how to prevent such problems from occurring in the future. MSP does have good literature about its subsidy schemes, but someone who does not know the scheme exists would never ask for copies of the pamphlets. MSP decided to try to reach this group of seniors in 1990. It will mail out information about subsidy programs to all MSP subscribers over 65 not already receiving a subsidy.

Widower billed for wife's ambulance trips

An elderly couple living in a continuing-care facility had minimal income and so were receiving help from the Ministry of Social Services and Housing. The woman became seriously ill and required transfer between the facility and a hospital on several occasions. Later she died, and after her death her husband received ambulance bills totalling over $200. His monthly income, after his care was paid for, was only $150. His daughter called our office to see if anything could be done.

The problem here was that the facility and the hospitals had called a private ambulance company instead of the provincial ambulance service. The Ministry of Social Services and Housing pays the provincial ambulance "user" fee for its clients, but does not pay private companies even though the actual cost is very similar. Neither the patient nor the facility knew this, and our concern was that the patient, who was unaware of the policy and had no control over which ambulance was called, ended up with the bill.

We contacted both Ministries - Health and Social Services and Housing - suggesting that people were falling through a crack between their two systems and asking that either private ambulances be paid for in the case of social-services clients or that Health-funded facilities not call private carriers for these clients. The Ministries decided to circulate a policy to all continuing care facilities explaining that private ambulances are not covered unless Social Services and Housing has given prior approval, required by unusual circumstances. This policy may not avoid further problems, so the Ministries will monitor the situation.

A costly referral to the Mayo Clinic

A woman had been in hospital for about five weeks while doctors sought to establish the cause of her painful symptoms. Unable to obtain a conclusive diagnosis, the doctors finally referred her to the Mayo Clinic in Arizona. She called us the day before she was to transfer to the Clinic, as she had just learned that the Medical Services Plan would not cover all of the costs. Her only source of income was a long-term disability pension, and she was concerned that her lack of money might prevent her from going to the Clinic.

We discussed the matter with a number of people, including MSP officials and administrators of the woman's extended health benefit plan. The MSP officials confirmed that they had provided pre-authorization for the woman to attend the Mayo Clinic and would pay up to the amount allowable under the payment schedule for B.C. The employee benefit plan administrators advised us that she would be eligible for payment of an additional 80 percent of her medical bill through her extended health plan. In addition, the Mayo Clinic agreed, after receiving pre-authorization from MSP, to bill the complainant rather than request payment at the time of discharge. While we were unable to obtain assistance with costs associated with the woman's travel or accommodation while she was at the Clinic, she was relieved to be able to attend to her health needs and not have to worry about additional financial strain.

Pharmacare

Pharmacare is a program operated by the Ministry of Health to assist residents of British Columbia with the purchase of prescription drugs and certain medical supplies. There are five categories of coverage, ranging from the Plan for Seniors, which covers 100 percent of the cost of the drug itself and 25 percent of the dispensing fee, to the Universal Plan, which covers 80 percent of the cost after an annual deductible, currently set at $325.

During 1990, we received complaints about Pharmacare's policy of covering prescription drugs only when the use for which they have been prescribed is the use for which the drug is licensed for sale. Sometimes clinical experience indicates that a drug has unexpected positive side-effects in the treatment of an unrelated condition. Physicians may then prescribe the drug for treatment of that condition.

In two cases we reviewed, expensive drugs had been prescribed for the treatment of conditions unrelated to the uses for which the drugs had been licensed. It was evident that the drugs were effective in treating these conditions. Unfortunately, no one had advised the complainants that the drugs would not be covered under the Pharmacare Plan. In one case, the pharmacist had contacted Pharmacare and had been advised that the drug was "covered", but this was on the assumption that it had been prescribed for the licensed use.

Although Pharmacare receives Canada Assistance Plan funding, the amount of which is related to actual costs rather than predetermined budget limits, the program must set a budget and operate rationally within its limits as far as possible. Pharmacare has therefore adopted some rules about coverage which limit its liability for payment. One of these rules is that only the licensed use of the drug may be subsidized by the program.

While it is reasonable and necessary for Pharmacare to adopt rules and policies regarding the extent of its coverage, it is important that these rules be based on reasonable criteria. When a rule is adopted solely for budgetary reasons, we have to ask whether there may not be other reasons which would argue for coverage. For example, a physician's view that the drug was medically necessary for treatment of the patient's condition might be argued to be a sufficient reason for coverage. Pharmacare has been conducting a review of all of its coverage policies in order to ensure that they are rational, consistent and appropriate, and we look forward to seeing the results.

Another major issue during 1990 was the introduction of a subsidy of the cost of glucose-monitoring strips for diabetics. Previously, no coverage had been available to meet the cost of these expensive supplies. Pharmacare first introduced a program to cover the cost of these supplies for youths and pregnant diabetics. In 1990 the program was extended to cover all diabetic groups. However, the subsidy is only available when a person has completed an education program about the disease provided at hospital clinics throughout the province. Although the program varies slightly from one hospital to the next, they generally last several days and are offered only in daytime hours. We received several complaints about the inconvenience and economic hardship to diabetics of attending the program.

It is important to remember that until the education program was introduced, Pharmacare did not cover test strips at all for most adult diabetics. Diabetics are not required to take the program. The program is only required in the sense that the subsidy is otherwise unavailable.

The diabetic education program was developed by the Ministry of Health through consultation with several groups, including physicians and the Canadian Diabetes Association, which protects and promotes the interests of diabetics. There seems to be widespread agreement among health care professionals and the CDA that the program is necessary and desirable. We are told that busy physicians are not always able to provide diabetics with all of the information they need about the nature of the disease and how to monitor it. The experience of those administering the program is that many diabetics incorrectly believe that they have all the information necessary to monitor themselves adequately. The education program therefore fills an important gap in the prevention of complications which may arise from diabetes.

Nonetheless, there are certain inconvenient aspects of the program which the Ministry of Health is currently attempting to address. Partly as the result of funding shortages, not all hospitals in the province have yet been able to establish a clinic, and this may mean that a diabetic has to travel some distance to the nearest hospital which has one. As well, because of overtime costs, most hospitals have not been able to establish programs which run at night or on the weekend. Thus, people have to take time off work to attend. Finally, it does appear to be true that some long-term diabetics are very knowledgeable about the disease and the monitoring process, and for them the full program may not be necessary. Hospital Programs has authorized clinic directors to use their discretion in adjusting the program to the individual needs of the patients involved. We hope that this flexibility will resolve many of the complaints we receive about this otherwise useful program.

Health Institutions

Regular visits by our staff to Riverview Hospital and the Maples Adolescent Treatment Centre continued throughout 1990. At Riverview our office acted as a consultant to committees dealing with changes to the B.C. *Mental Health Act* and the establishment of a Residents' Council and a Patients' Concerns Committee. We also reviewed several internal investigations done at Riverview into allegations of patient abuse. At the Maples, we have had discussions about the ongoing plans to place non-certifiable mentally ill adolescents in their own communities, with appropriate levels of local services and programs as an alternative to being institutionalized.

The Forensic Psychiatric Institute serves the needs of a large number of patients, many of whom are held for long periods by court order. Some patients are held for less than 60 days while being assessed for the court; others, declared unfit to stand trial, remain until considered fit; still others remain until they are considered able to function safely in a community setting. This latter group includes those who have been found not guilty of crimes by reason of insanity and those whose charges were dropped or stayed but whose mental condition prevents their immediate release to the community. While at the Institute, some patients are housed in aging facilities in dormitory-style surroundings. A new unit, the Doctor Halliday Unit, provides individual rooms and more individual services. We regularly visit the Institute to talk with staff and patients.

This year we are pleased to report that the Patients' Concerns Committee at the Forensic Psychiatric Institute has taken an important role in addressing patient issues. Consisting of three staff members, the committee assigns a member to make inquiries shortly after receiving a request from a patient. When a patient contacts our office first, we will often refer the matter to the committee. This important avenue of redress provides an immediate indication to a patient that someone in authority has heard the complaint, considered it and will provide reasons for a decision, or a resolution. Issues that arise that are considered beyond the scope of the committee's ability may be referred to the Director or to other appropriate levels of the ministry. If not satisfied with the result, a patient may contact us for further help.

On our monthly contacts with the Institute we meet with committee staff and assess the work they have done. This responsible approach by the hospital to addressing complaints from patients assists our office to make good use of our time and resources and benefits the hospital as well.

Evicted for assault

An elderly man living in an intermediate-care facility complained that he had been given an eviction notice for no apparent reason. When we contacted the facility to discuss the matter, it became apparent to us that the reasons for evicting the resident had not been articulated clearly. Consequently, we suggested that the facility clarify, in writing, the type of unacceptable behaviour that the resident had demonstrated and that the facility found intolerable.

In response to our recommendation, the administrator of the facility cancelled the eviction notice and wrote to the complainant, describing the unacceptable behaviour, stating what was expected of the resident, and warning that any breach of the conditions set out in the letter would result in eviction.

Satisfied that the resident had received fair treatment, we were about to close our file when we were notified that the resident had breached the conditions of his continued residency by assaultive behaviour on three occasions and would therefore be evicted.

As a footnote to this unfortunate story, when the centre began the actual eviction process the staff found that there were no guidelines for this type of action in the service provider handbook and had to "wing it" on their own. We expressed our concern about the absence of guidelines to Ministry officials, who agreed to provide the necessary guidelines for service providers who might be faced with a similar problem in the future.

As the day approached for the eviction, the resident's health had deteriorated to the point where he had to be hospitalized in an acute-care setting, where we understand he remains to the date of this report.

Restraint leads to broken arm

The parents of a patient at Riverview Hospital complained that staff had used excessive force on their daughter and as a result her arm was broken.

The patient had refused to return to her ward at the required time one evening. After attempting for 45 minutes to convince her to return, a female health-care worker sought assistance from a male colleague. The patient attempted to kick the male worker, and in his efforts to restrain her he placed his hands on her shoulders. At that point, something "popped" in her arm, which had been previously injured that year. She was taken to hospital, where a fracture of the left humerus was diagnosed.

We reviewed the investigation of the incident conducted by Riverview Hospital and carried out further inquiries. We found no evidence that undue force was used in the incident. We did propose as a result of our investigation that the hospital take the following steps:

1. Emphasize the need to consider alternatives to physical restraint, and ensure that all staff attend a Preventive Management of Disturbed Behaviour training, with regular upgrading.
2. Communicate fully with staff who are unfamiliar with a patient before asking them to help, then thoroughly plan the strategy for the intervention and debrief with both the patient and staff after an incident.
3. Review written guidelines for the conduct of patient injury investigations to ensure that all parties are interviewed thoroughly so that a clear picture of the incident and the circumstances leading up to it emerges, and use the investigative findings as a learning experience to improve staff performance.

The hospital agreed with our proposals.

Evangelical message inappropriate

The lives of patients at Riverview Hospital are enriched by many individuals and groups through such mechanisms as the pastoral and volunteer programs. People involved in the programs are screened and receive training on how to be effective and helpful to the patients.

A man told us he was not ordained by a church, but wished nevertheless to bring an evangelical message to the patients. He complained that when he attempted to carry out his calling, he had been escorted from the hospital grounds and barred from entering again. He believed the decision to deny him entry was unjust and unreasonable.

We were unable to agree with the complainant. The man had already upset some patients and had not been invited by any patient to visit. We concluded that the hospital was obliged to take the action it did to protect its vulnerable patients.

Fear of AIDS disturbs patient

A hospital patient protested about having to share living quarters with a patient rumoured to have AIDS. When he complained to the nursing staff, he told us, he received a brisk and unhelpful reply which did not address his concerns.

We confirmed that the complainant's room-mate had been tested for AIDS, but the tests had been negative. We used this opportunity to examine the hospital's policy on sharing information on AIDS with patients to assist them with their fears as well as to inform them of possible dangers and appropriate safeguards. The charge nurse agreed to provide all patients with information on the transmission of the virus. Information brochures were ordered and distributed to patients, and the charge nurse agreed to speak to the complainant about his concerns. We concluded the matter to be adequately resolved by these actions.

Too close for comfort

A patient at the Forensic Psychiatric Institute complained that staff were infringing on his privacy by standing too close while he talked on the phone. Some time before, another resident had damaged the telephone while using it; as a result, staff were being extra-cautious. The man claimed that he did not feel free to converse with his lawyer by telephone with staff in hearing range.

Following our discussion with the Acting Director, it was decided that staff would continue to ensure that the proper telephone connection had been made, but would then stand further away to ensure privacy for the patient making the call.

Controls on restraint procedures

From time to time in a mental health centre, it is necessary for staff to use physical restraint on a patient in order to protect others or sometimes to protect the patient. One youth complained about the physical-restraint procedures and stated that staff were using more force than necessary to conduct such restraints. Because of the general nature of this concern, senior staff subsequently arranged for the instructors of the Physical Intervention Techniques Program to appear before the Residents' Council and answer their questions.

The meeting was useful and productive. Residents were informed about follow-up procedures available to them in cases where they believed a restraint to have been improperly conducted. Management reaffirmed its aim to have all staff trained or retrained in such procedures once a year

Home for Christmas

Relatives of several patients at Riverview Hospital complained about a change in the leave policy for involuntary patients. Previously it had been possible for involuntary patients to be eligible for unescorted day passes and extended leaves with other responsible adults.

A new policy was implemented which restricted involuntary patients to escorted day passes only. This meant that relatives could no longer take patients out for weekends and other holidays. Many were upset that this was going to prevent patients from being home over the Christmas period.

The Vice President of Medical Services reviewed the new policy and, while the policy was confirmed, a "grandparent" provision was created to make it possible for patients to apply for an exemption from the policy for the Christmas period. The complaints to our office on this issue abruptly stopped.

Home care for dying youth

A woman contacted our office to ask for information about the availability of services to assist her in caring for her 17-year-old terminally ill son. We referred her to the Ministry's At-Home program, of which she had been unaware. Although she had been on income assistance for some time and had had her son in and out of hospital, no one had informed her about services which would add to the quality of her son's life.

She contacted the Ministry of Health to seek help from the At-Home program, and assessment of her son's needs by the program was scheduled for June 14, 1990. However, on that day he went back into hospital, where he died two weeks later. His mother remained angry that the extra assistance she received through the income assistance office came only after she had to appear before a tribunal, and that those professionals involved never gave her referrals to other sources of assistance.

Ministry of Labour and Consumer Services

Resolved	38
Not resolved	1
Abandoned, withdrawn, investigation not authorized	34
Not substantiated	43
Declined, discontinued	67
Inquiries	28
Total number of cases closed	211
Number of cases open December 31, 1990	55

A matter of interpretation

A representative of a trade union sought our opinion about the meaning of section 46 of the *Hospital Act*, which, he contended, cast upon the Minister of Labour and Consumer Services the duty to ensure that fair wages and working conditions are provided to all workers engaged in hospital construction or maintenance in the province. The union argued that the Minister should monitor all significant construction or maintenance contracts to ensure that this requirement is met.

This office disagreed. We interpreted the section as empowering the Minister to make a decision, binding upon parties to a labour dispute, as to what constitutes fair wages and working conditions within the context of the dispute. We did not find that the section created an obligation upon the Minister to monitor and review all hospital and maintenance contracts. Were such a duty to exist, not only could it be argued that this might interfere substantially with freedom to contact, but it also would require the establishment of a major administrative enterprise similar in function to Employment Standards Branch. We concluded that the intent of the section was to provide for fact-finding and binding decisions in a case where a party to a contract has sought the Minister's assistance. It did not allow for third parties to invoke the Ministry's intervention.

Alcohol and Drug Programs

In 1990 this office received few complaints regarding Alcohol and Drug Programs. The usual practice on receipt of a complaint is to ask the Drug and Alcohol Programs Regional Director or Area Manager to review the circumstances of the complaint and advise us of his or her findings. When these are reported to us, we usually report them to the complainant and invite further comment by the complainant should conflicting views or unconsidered information exist. Once all the information is in from both sides, we make our own findings and report them to the parties.

Expulsion from treatment centre justified

A woman who was undergoing drug and alcohol counselling at a treatment centre complained that she had been expelled from the contracted facility for inadequate reasons.

We asked the Alcohol and Drug Programs Area Manager to review the matter and ascertain the particulars of the expulsion. The Manager did so, and reported to us that the complainant had been expelled from the program for good reasons. First, she had returned to the Centre from an outside appointment in an obviously impaired condition; second, she had obtained prescription drugs in addition to those that both she and the treatment centre staff, at the time of her admission, had agreed were necessary for her use. Both of these actions represented fundamental violations of the conditions of her treatment program.

We relayed the results of the Manager's investigation to the complainant and told her that if she had any different information, she could contact our office and have us investigate the issue further. Otherwise, we would deem her complaint to be not substantiated, as it appeared from the information we had obtained that the decision to expel her from the centre had been well founded. Our letter was returned as undeliverable, and we were unable to make further contact with the complainant; nor have we since heard from her.

Homemaker fails to show up

We received a complaint on behalf of a disabled man that "detox" facilities in Vancouver would not accept a person in a wheelchair.

After being notified of the complaint, the Area Manager advised us that all of the Alcohol and Drug Program-sponsored detox facilities in Vancouver are accessible to wheelchairs, the only restriction being that persons in wheelchairs make arrangements for homemaker assistance if unable to look after their basic needs. The complainant had been informed of this requirement and had made such an arrangement; unfortunately, the promised homemaker had failed to show up.

Employment Standards Branch

Many complaints about the Employment Standards Branch focus on the amount of time it takes the Branch to complete a claim. Complainants feel, for a variety of reasons, that the system is too slow. Often our investigations reveal legitimate reasons for the delays of which complainants are unaware prior to their contact with us.

No money for wages

In the case of a woman who complained about delay in getting her wages-owing claim settled, we found that the process had taken quite a long time to conclude; however, it had not been the fault of the Industrial Relations Officer (IRO). The woman's employer had not co-operated with the IRO in settling the matter, and the process had necessitated several legal steps to resolve the matter in the complainant's favour.

In an investigation of a similar complaint, we found that the employee's claim had had to go through all of the Employment Standards process, including corporate and directors' certificates. The process had finally been completed, the only snag being that there was no money available from the company or the directors. Since neither the company nor any of the directors had any assets or money that the Branch could take action against, the unfortunate complainant had to wait until the Branch was able to find some money or assets to convert to money so that she and other former employees could be paid.

Read my caps

An employer complained that he had not been informed of his right to a review when the Employment Standards Branch issued his company an order to pay. We examined the documentation on the Employment Standards Branch file and found that on the front page of the Order to Pay, it was noted in bold capital letters that details of review procedures were on the reverse side of the order. On the reverse, it gave complete information to the employer on the manner by which he could request a review of the order by the director. We considered this to be adequate notice.

Liquor Control and Licensing Branch

Waterfront pub meets opposition

When the Liquor Control and Licensing Branch approved a licence application for a waterfront neighbourhood pub, a number of residents took strong exception and asked us to intervene. We determined that the required referendum had been properly conducted and that issuance of the licence was justified.

Just as the pub was about to open, a newspaper reported that ownership of the licence had changed. This allegation brought new complaints, and we were back in the picture again. To all appearances, the licence had simply been transferred between family members, but any change in licence ownership requires approval by the General Manager of the Branch, and the request arose as to whether this had been sought and received.

It turned out that the original licence had been issued to a woman who, becoming seriously ill, wanted to transfer her interest to her two sons. The application for the transfer was accompanied by a letter of support from the woman's doctor, and the General Manager exercised the discretion granted him under the *Liquor Control and Licensing Act* to approve the request. We concluded that he had done so in a reasonable manner.

No beer for rural racetrack

The operator of a rural motor racetrack was denied approval for an "E" category stadium licence, which would allow the sale of alcoholic beverage at race meets. Ministry policy requires sufficient barriers between the spectators and the track to ensure public safety. We considered the policy reasonable, and the complainant's track did not meet its requirements. As a result, we considered the refusal to grant an "E" licence to be reasonable.

The operator complained to us again when he was given to understand that B.C. Place was issued an "E" licence for the International Motor Race in Vancouver on the Labour Day weekend. On contacting the Ministry, we were told that B.C. Place had not received a new "E" licence; instead, the general manager of the Liquor Control and Licensing Branch had used his discretionary authority to extend the stadium's existing "A" category (lounge) and "E" category (stadium) licences for the three-day event. This permitted liquor to be consumed in the hospitality "boxes" and in the beer gardens. In making the decision, the general manager had taken into consideration the professional standing of these internationally competitive drivers and race cars and the fact that the policy guidelines regarding public protection were met. This latter point created a clear distinction between the complainant's application and that of B.C. Place, and we concluded that the Branch had acted fairly in denying one licence and extending the other.

Registrar of Travel Agents

Good-bye, Hawaii trip

Low, low air fares are sometimes offered by companies with great expectations of profit and a good chance of going broke.

A retired man decided to take advantage of special fares offered by a tour company for winter trips to Hawaii. He booked the flight and sat back to dream of the sun, sand and surf awaiting him. These dreams evaporated when the company went bankrupt, leaving him without his vacation and with a large hole in his bank card account.

Making the best of a bad situation, he asked his travel agent how he could obtain reimbursement for his expenses. She told him about the Travel Assurance Fund, created by travel agents' contributions and administered by the Registrar of Travel Agents for the purpose of compensating travellers hurt by tour company bankruptcies. When the man contacted the Registrar of Travel Agents, he was told he would have to prove that his bank card company would not reimburse him before he could collect from the fund. He thought this unreasonable, as the bank card public relations office had already told him his chances of his account being credited for the lost amount were slim indeed, as the credit card company had already paid the amount to the tour company. He then sought our help.

The Registrar of Travel Agents told us that a large number of vacationers had lost their money and applied for reimbursement from the fund as a result of the bankruptcy. Consequently the office was making every attempt possible to ensure that claimants had exhausted all other avenues of recovery before approving their claims, as required by the *Travel Agents Act*. Meetings were scheduled with lawyers for the two major bank card companies to determine who would take responsibility.

The result of the meetings was that one bank card company agreed to credit its customers' accounts for the amount of their losses, while the complainant's bank card company declined to do so. As a result, the complainant's claim against the Travel Assurance Fund was approved, and in due course he got his money back.

Residential Tenancy Branch

The Residential Tenancy Branch is responsible for the administration of the *Residential Tenancy Act*. The Act provides that landlord and tenant disputes are to be resolved through arbitrations administered by the Branch. The Branch also has a staff of inquiry officers who provide information to people inquiring about their rights.

In 1989, the Branch acquired jurisdiction over monetary matters. Previously, clients went to the Branch for non-monetary matters such as eviction, but to small claims court whenever a monetary issue was involved. In the spring of 1991, the limit of the Branch's monetary jurisdiction was increased to $10,000.

During 1990, the Branch acquired a new director, and three managers to fill newly created positions for management of the regions. The new management team is in the process of a thorough review of the legislative mandate of the Branch and the quality of service it provides. Initiatives are under way for plain language legislation and for "user-friendly" forms and information about the *Residential Tenancy Act*.

The Act authorizes the Minister to appoint arbitrators to make binding decisions. The Ombudsman's office has the power to investigate complaints about arbitrators, but it is rare for us to be able to provide complainants with practical assistance. There is a technical legal reason for this. Once an arbitrator has made a decision, he or she has exhausted the power to consider the issues. This means that the decision cannot be changed after the fact, even if we concluded that the decision was wrong or that the complainant had not received a fair hearing, in all but certain very unusual cases where a fundamental legal error has been made. The only remedy available is through a process called "judicial review", which is a proceeding before a judge of the Supreme Court in Chambers. Complainants tell us that this is not a useful remedy, because it is too technical, too slow, and too expensive, and we are currently studying possible alternatives with the Branch.

Often, the complaints we receive reveal problems which might have been avoided had the parties been better prepared for the hearing. Many people do not realize that the hearing is their only opportunity to present their evidence. Thus, they may incorrectly believe that evidence can be presented afterwards to correct a decision which went against them. As well, people may not have sufficient information to understand what evidence would be useful to the arbitrator in assessing the issues. The Branch is developing better information sheets, and these should be helpful. An interesting proposal was made by an arbitrator who suggested that the Branch prepare a video of a mock arbitration, with a commentary which would highlight common problems. The video could then be distributed through government agents' offices and public libraries.

Rent paid, but not to landlord

A landlord attempted to evict a tenant for non-payment of rent. She and her former husband were engaged in litigation over the property rented by the tenant, and the court had ordered that the tenant pay the rent to the husband. When the tenant did so, the landlord argued that as she had not received the rent herself, it had not been paid, and she was entitled to evict him. When the arbitrator found that the tenant had acted properly, the landlord complained to us that the arbitrator's decision was biased in favour of the tenant.

We explained to the landlord that it would be unfair to require the tenant to pay rent twice - once to her former husband, pursuant to the court order, and once to her - as her argument seemed to imply. In this novel situation, the arbitrator held that the rent had in fact been paid, although not to her.

Arbitrator's decision misunderstood

A tenant complained that he did not understand a decision the arbitrator had made, but he felt that it was unfair. He said that the arbitrator had not provided the parties with a written explanation of the decision.

When we spoke to the arbitrator about the decision, it was clear that the complainant had misunderstood its effect because it had not been explained in terms he understood. As no written reasons had been given, we recommended and the arbitrator agreed that they should be provided.

Tenant vacates, landlord demands rent

A tenant filed an application under section 9 of the *Residential Tenancy Act* for an order that the landlord carry out certain repairs. It was agreed that they would be made, but the landlord did not carry them out to the tenant's satisfaction. He advised the landlord that he intended to leave partway through a rental month and paid no rent. The landlord then gave him a 10-day notice of eviction for non-payment of rent.

The tenant left the premises, and, despite his own notice terminating the tenancy, the landlord claimed for that month's rent, the next month's rent, and various other expenses. Although the tenancy appeared to have terminated as a result of the eviction notice, with the consequence that no rent would be owing after it terminated, the arbitrator awarded the landlord rent for the month. Subsequently, another arbitrator ruled against the landlord's application for an additional month's rent, holding that the tenancy had terminated pursuant to the landlord's notice of eviction and that no claim for rent could be made after it terminated.

This case illustrates the difficulties which may arise when arbitrators do not agree about the meaning of certain provisions of the *Residential Tenancy Act*. It is certainly unfortunate when different results are obtained on the same question of law. A recent Supreme Court of Canada decision suggests that where many decision-makers are considering the same issues, it is appropriate for them to discuss general questions of policy so that consistent decisions may be promoted. The arbitrators do meet to discuss legal and policy issues, and it is to be hoped that greater consistency will be achieved in time as a result.

Ministry of Municipal Affairs, Recreation and Culture

Resolved	5
Not resolved	-
Abandoned, withdrawn, investigation not authorized	8
Not substantiated	17
Declined, discontinued	10
Inquiries	5
Total number of cases closed	45
Number of cases open December 31, 1990	12

Municipalities and Regional Districts remain "unproclaimed authorities" under the *Ombudsman Act*, meaning that the legislature originally contemplated legislative jurisdiction for this office in these areas. However, such jurisdiction requires further proclamation by the cabinet; as this has not yet come to pass, our relationship with Municipal Affairs continues to be marked primarily by consultation on matters which most often are beyond our direct jurisdiction. Many complaints about local government are referred by us to the office of the Inspector of Municipalities, whose investigative staff of two individuals has been energetic and thorough in tackling problems brought to their attention. Like this office, they can only investigate and recommend. Unlike this office, however, they are not independent, and work under a comparatively narrow mandate.

Setting up camp on the burial grounds

The site of ancient Indian burial grounds became the centre of a stormy controversy when the Ministry of Transportation and Highways began rerouting a rural highway. Local residents, concerned that the project would damage the site, asked the Heritage Conservation Branch to conduct an archaeological survey. As a result of the survey, the Branch designated the location a heritage site under the *Heritage Conservation Act*. The Ministry of Transportation and Highways adjusted its project plans accordingly to bypass the threatened area.

A band of U.S. natives with B.C. ancestry, having heard about the dispute, drove up from Washington and set up tipis on the site, declaring it their home. The first complaint we received was from a farmer whose property was adjacent to the heritage site. He complained that the natives were desecrating the site by driving trucks on it and were repeatedly trespassing on his property. The police, he said, refused to have anything to do with his problem. He wanted the Heritage Conservation Branch to make the natives go home to Washington.

The second complaint we received came from a woman who was upset with the first complainant. He had obtained a contract with the Ministry of Transportation and Highways to supply gravel from his farm for the highway project. She believed the pit had not been officially approved and was a disruption to the community.

Native bands sought and won an injunction preventing the farmer from "continuing construction of a gravel pit and thereby destroying the plaintiffs' ancestral burial grounds". In addition, the Agricultural Land Commission demanded that removal of gravel be stopped and the site be rehabilitated because the Regional District had refused to issue the permit required for soil to be removed from an agricultural land reserve, as required by the *Soil Conservation Act*. The final blow was delivered by the Ministry of Mines inspector, who demanded a $1,500 bond from the farmer to be held until reclamation was completed, as no permit had been obtained from that Ministry for the extraction of gravel, as required under the *Mines Act*.

The Heritage Conservation Branch determined that it had legal authority to order the natives removed from the site, but concluded that it might not be politic to do so. Accordingly it encouraged the formation of a local steering committee to discuss long-term plans for the site and to seek a compromise with the occupying natives by which they would agree to relocation elsewhere. The natives eventually agreed to move, on condition that the Royal British Columbia Museum return bones in its possession that had long ago been excavated from the site, so they could be reburied. Once this was consented to, a disagreement arose among a number of bands, each of which claimed to be the rightful ancestors of the original residents of the ancient village and each of which wanted to preside over the reburial ceremony. The Heritage Conservation Branch made plans for such a ceremony to take place once that dispute was resolved.

Blind man eligible for tax relief

A man who was registered as legally blind with the Canadian National Institute for the Blind received property tax relief because of his disability. However, after he moved to a different community, his new doctor was reluctant to sign a medical certificate required by the Financial Services Branch of the Ministry of Municipal Affairs as a condition of granting relief for taxes on the new home. The relief comes in the form of a "topping up" of the homeowner grant, which is administered by the Branch.

The doctor understood that eligibility for tax relief under the program was granted only where a home had been modified to accommodate the needs of a disabled person. Since the new house had not been modified, the doctor felt it would be wrong to sign the form. His patient assumed there must be a mistake and asked us to seek clarification.

The Financial Services Branch assured us that eligibility for tax relief depends on the doctor's opinion of an applicant's ability to function unaided in the home. While modifications are a relevant factor in determining the level of ability, they are not a prerequisite for eligibility.

We relayed this information to the complainant's doctor, who confirmed that his patient could not live in his home without assistance. Thus informed, the doctor signed the certificate without hesitation.

No destination resort in our backyard, thanks

A group representing residents of one of the Gulf Islands complained about what they felt to be inappropriate administrative and financial support for a controversial resort development which some residents believed would destroy the essentially rural character of the island. They strongly objected to provincial support for a development which they believed to be contrary to the mandate and established goals of the Islands Trust; secondly, they submitted that financial interest to the developer by way a low-interest loan constituted inappropriate public assistance to a private corporation.

This was a case in which the jurisdiction of this office had to be carefully considered. The Islands Trust remains an "unproclaimed authority" within the schedule to the *Ombudsman Act*. This means that although it was intended in the legislation that the Office of the Ombudsman would have investigative authority over the Islands Trust and other local governments such as municipalities and regional districts, that portion of the schedule has not been proclaimed by cabinet.

At the time of this complaint, the Islands Trust had been given full political and financial autonomy, meaning that its budget would no longer be administered through the Ministry of Municipal Affairs. This consideration was important, as it removed any tangent of jurisdiction which this office might otherwise have had to investigate the complainants' concerns with respect to the conduct of the Islands Trust. This office was limited to making certain observations as a courtesy to the complainants.

These observations in essence noted that the development as contemplated by the proponent was in all respects lawful and within the development limits permitted by existing local zoning. An interesting element of this case was the fact that the proponent had launched a lawsuit against various individuals, both private and those representing the Islands Trust and its committee. This office was only able to advise the complainants to seek whatever legal assistance might be available from the office of the Attorney General, or to retain private counsel.

With respect to the question of the appropriateness of development assistance programs, this office again found itself without direct jurisdiction, for the reason that decision to put the programs in place was a political one. Whether or not the development company qualified for the benefits of the program was not at issue. The assistance in question was granted pursuant to the authority of a federal/provincial agreement by which low-interest loans could be made to specific tourism development projects, at a rate of up to 25 percent of eligible capital costs. This office noted that the low-interest loan was simply one way to provide governmental assistance; other methods which have been employed include tax holidays, development grants and joint ventures.

Thus, it was up to the opponents of the disputed development to carry on their struggle both at the legal and political levels.

As a related matter, this office notes that waterfront developments in areas prized for their tranquillity or scenic beauty invariably seem to create heated disputes. This office would suggest, as has been put forth in Public Report #15 of this office, "Aquaculture and the Administration of Coastal Resources in British Columbia", that the key to the prevention of such disputes is co-operative planning. Prudent management of British Columbia's coastal resource must be based on an understanding that over time there will be few areas if any on the coast line which are not capable of some form of economic exploitation, be it for tourism or industry. Planning for a diverse range of coastal uses which incorporates extensive public involvement can go a considerable distance toward ensuring that development is compatible with the most appropriate and developmentally stable use for the area.

No debt, so no homeowner grant

A home purchaser thought he had a good deal when the seller agreed to pay the property taxes and let the purchaser collect the home owner grant. After the sale went through, the new owner went to the municipal offices and was informed, to his surprise, that he was not eligible to receive the home owner grant because the taxes had already been paid. He called our office to complain.

We confirmed that the information the complainant had received from the municipality had been correct. Section 1 of the *Home Owner Grant Act* provides that a grant means "a reduction of indebtedness for the current year taxes". As a result, once the taxes have been paid, there is no longer a debt and therefore no longer any eligibility for the grant.

It is a common occurrence for buyers and sellers of real estate to arrange a division of responsibilities for payment of property taxes, which is reflected in their statement of adjustments. However, the *Home Owner Grant Act* makes no provision for a division of the grant, which explains why buyers and sellers sometimes fall into the type of arrangement that resulted in the complaint to our office. Unfortunately, realtors and lawyers who are unaware of the provisions of the Act may inadvertently lead vendors and purchasers into the mistaken belief that this type of arrangement may be made.

In this, as in so many other tales of woe we hear about sales transactions, the moral is buyer beware by being informed. The best (and cheapest) source of information about grants and taxes is often the agency that administers them - all it takes is a phone call.

No vote for seafarer

With municipal elections coming up, an

employee of the Coast Guard found out he was scheduled to be at sea not only on election day but also on the day set for the advance poll. He was told by municipal officials that if he wasn't present on either of these occasions, he'd have no other chance to vote. He thought this information must be wrong, as he knew there was provision for casting a vote in provincial and federal elections for those in his position. If the information was right, he told us, then he was being denied a fundamental right and something ought to be done about it.

The information given the complainant was correct. Federal legislation makes provision for voting by citizens who are out of the country at election time, and the provincial *Election Act* was amended in 1986, as a result of a Charter challenge by out-of-province university students, to provide for mail-in votes for B.C. residents who are unable to cast ballots in their ridings.

Section 3 of the Canadian Charter of Rights and Freedoms provides that "every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly..." The Charter makes no mention of municipal elections, and the B.C. *Municipal Act* makes no provision for mail-in or proxy votes. We were unable to substantiate the seaman's complaint; however, we brought the matter to the attention of the Ministry of Municipal Affairs for its consideration and suggested that the complainant express his concerns directly to the Minister.

Water system not up to snuff

A man complained that lack of supervision by the Ministry of Municipal Affairs enabled an Improvement District to develop an improper and inadequate water system. The complainant was particularly concerned that the water storage tank had been formerly used at a pulp mill and that lack of water pressure meant that some families received little or no water.

The Ministry advised us that it relied upon engineering expertise available to the Improvement District, that it had ongoing negotiations with the District's officials, and that an on-site meeting and inspection were already scheduled. After this contact by our office, the questionable tank was removed from service, and basic engineering problems were corrected and suggestions for further improvement made. An open offer of assistance was given by the Ministry to the Improvement District.

We were satisfied that the Ministry's involvement ensured a reasonable resolution to the complainant's concern. The basic cause of the problem had been the Improvement District's understandable wish to economize; when an inefficient water supply resulted, corrective procedures were necessary and were insisted upon by the Ministry.

In the shadow of the mountain

A rural resident complained that as a result of a geotechnical study completed by a Regional District, his home had been declared unsafe for habitation. The house's location, backed into the bank at the toe of a mountain, subjected it to potential land, snow, mud or debris slide. The complainant had less difficulty accepting the hazard itself than he did living with the consequences of the professional classification of "unsafe", namely that the commercial value of his property dropped to practically nothing. Neither the District nor any other authority would discuss plans for the future, and the complainant's worry for the safety of his family was increasing.

Our investigation revealed that the Regional District had initiated the geotechnical study to find out which homes in the area were in a potentially dangerous location. Funding had been provided by the Ministry of Municipal Affairs. The study identified about eight homes that were unsafe for occupancy. The District had no follow-up plan other than to notify the provincial authorities. Abundant correspondence between the District and provincial government ministries documented the identified hazards, the concerns of the families affected, and the need to treat all parties fairly. What the correspondence did not do was describe the next steps to be taken, and no one had contacted our complainant after he raised his concerns.

At the same time as the complaint was made to us, the Ministry of Solicitor General assigned staff in its Provincial Emergency Program to draft policy regarding compensation under the program for homes designated unsafe. The new policy was to develop criteria for compensation based on factors such as whether the affected dwelling can be transported to another part of the property or elsewhere, and to define circumstances in which there should be total or partial government purchase of the property.

While many questions remained to be answered, the complainant was happy to know the policy development was under way.

Ministry of Parks

Resolved	3
Not resolved	1
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	3
Declined, discontinued	4
Inquiries	0
Total number of cases closed	14
Number of cases open December 31, 1990	5

Parks Plan '90 is a significant initiative in seeking information and views from the public throughout B.C. as to what recreation goals, special features, and landscapes should be the subject of promotion and preservation through special provincial efforts. The public interest in the program was demonstrated by the fact that about 12,000 submissions were received.

Like most other ministries which deal with resources in the province, the Ministry of Parks acts as a referral agency to the Ministries of Forests and Crown Lands. The particular mandate of Parks to "preserve a living legacy" can and does bring it into conflict with the interests of those who may wish to pursue commercial or industrial development goals. As may be evident in this annual report, such conflict is a recurring theme for resource ministries; again, the challenge of applying fair principles of integrated management to achieve an equitable resolution of opposing interests will be one of government's principal challenges in the 1990s.

The Ministry of Parks is wise to pursue its mandate in a public and visible way. It is expected that the quality of results achieved will be directly proportional to the degree to which comprehensive multiple-use resource planning becomes the norm in provincial public administration.

George the Moose, meet Jerry

In the spring of 1989 a complainant brought to this office an allegation of trade mark infringement against the Ministry of Parks. The case was then, and will probably remain, unique.

In the late 1970s, while living in Alberta, the complainant created a whimsical promotional character called "George the Moose". He was successful in convincing a department of the Alberta government to adopt George the Moose as a promotional mascot for communicating the benefits of fitness to children. Items which were produced featuring George the Moose included buttons, t-shirts, posters, and colouring books.

In the early 1980s the complainant moved to Vancouver Island and continued to use his promotional character for paid appearances at commercial events such as store openings, shopping mall promotions, etc. At the same time, the complainant attempted to interest the B.C. Ministry of Health in adopting George the Moose as a fitness promotion mascot, much as Alberta had previously done. Some measure of interest was shown by the Ministry, although no agreement was ever reached.

In 1986, with the 75th anniversary of B.C. Parks, the complainant was startled to see a photograph of an individual dressed in a moose mascot costume appearing with the Minister of Lands, Parks, and Housing in an official promotional photo session. The moose mascot character utilized by B.C. Parks was named "Jerry the Moose". The complainant, believing that communication between ministries had resulted in the theft of his concept by the Ministry of Parks, and an infringement of trade mark rights he had acquired through federal registration in 1983 under the *Trade Mark Act*, confronted the Ministry directly by way of a series of letters written on his behalf by a lawyer. The Ministry denied that there was any infringement and refused to discuss compensation.

Later in 1986, as a result of legal advice obtained by the Ministry, application for trade mark registration of Jerry the Moose was made pursuant to section 9 of the

Trade Mark Act. This is a unique provision in federal law which allows the Crown, whether federal or provincial, to adopt an "official mark" with absolute priority; no right of action exists for private individuals or corporations who might otherwise attempt to argue that the form of the official mark constitutes an infringement of their own registered mark. Thus, when the province registered Jerry the Moose as an official mark, the complainant was left with no opportunity to attempt to rectify legally what he perceived to be a trade mark infringement. While the complainant would by no means have been assured of success in a civil action against the Crown had Jerry the Moose not been registered under section 9, the complainant would at least have had an opportunity for his "day in court".

It was the conduct of the Ministry of Parks in securing superior trade mark rights under section 9 which led this office to consider whether such conduct could be regarded as oppressive. We were satisfied after investigation that Jerry the Moose had not been derived from or otherwise inspired by George the Moose. Also, and perhaps more importantly, we noted that Jerry the Moose had been utilized as a promotional vehicle for generating public interest in B.C. Parks and not as a means of generating revenue for government. In that sense, the alleged infringing activity had not generated profits, which the courts tend to look toward as one measure of damage in trade mark infringement cases.

We concluded that the complainant had indeed been hurt and offended by provincial conduct; however, his alleged losses were neither quantifiable nor compensable. In these circumstances, we recommended that the nominal legal fees incurred by the complainant in communicating with the Ministry be reimbursed, along with a written undertaking from the Ministry not to take any legal or administrative action which would limit the complainant's use of his own promotional character, George the Moose. After consideration at senior levels within the Ministry, such nominal compensation was denied. The Ministry, however, was willing to declare that it would take no action with respect to the complainant's future use of his own promotional character. We are not satisfied that the complainant has been treated fairly by this partial resolution.

Ministry of Provincial Secretary

The Ministry of Provincial Secretary, although small, has varied responsibilities. It looks after the British Columbia Archives and Records Service, administers lottery grants, and is responsible for multicultural programmes. It provides support services to the Registrar of Voters and to Government House. The Public Affairs Bureau is a part of this Ministry.

Videotape requested, red tape received

An author and consultant working on a book-length study of advocacy and related institutional advertising needed information in the hands of the provincial government. Although the same information had been aired on television throughout the province, the complainant was told by the Public Affairs Bureau that he could not have it. The request was for print samples of B.C. government advertising in the last decade, beginning with the current B.C. News Update series.

The complainant initially telephoned the Ministry and was asked to submit his request in writing. This he did. A prompt response from a Ministry official informed him that "unfortunately, at this time I feel it is inappropriate to release the tapes to you. Should there be a change of policy ... I will revisit the matter with you."

When he heard no further, indicating that no change of policy had occurred, the complainant came to us. He told us that he had offered to pay for the cost of producing the copies he wanted, but had been told that this wasn't the point. He had been unable to determine exactly what the point was.

To receive an answer to this question, our office phoned the Ministry and was told that although there was no formal policy on the matter, copies would not be provided in the absence of a policy. Further discussion revealed that the primary rationale presented for the decision was concern about the ability of Bureau staff to provide the requested service. If everyone wanted a copy, it was suggested, the Bureau might not have the staff to comply with such requests; however, the Ministry was going to think about it.

We now wrote to the Ministry, asking where the complainant might be able to view the materials and perhaps copy by himself what he required. We further asked the Ministry to let us know, in the event that the first option was not considered possible, at what cost the Ministry would be able to provide a complete series of copies. The Ministry's response was that the matter was under review.

More than a month later, when it appeared that the review had not been completed, we again asked for a response. Finally the Ministry wrote to the complainant, informing him that News Updates as they appeared in 1989/90 were now in the mail to him. The complainant, although puzzled by the delay, was pleased with the end result. From our point of view, the service requested by the complainant appeared to the reason the Bureau had been set up, namely provision of information to the public; as no coherent reason for not providing the service had been given either to the complainant or to our office, we believed the Bureau had made the correct choice in finally agreeing to the complainant's request.

Ministry of Regional and Economic Development

Resolved	6
Not resolved	0
Abandoned, withdrawn, investigation not authorized	2
Not substantiated	1
Declined, discontinued	2
Inquiries	5
Total number of cases closed	16
Number of cases open December 31, 1990	5

We receive few complaints against the Ministry of Regional Economic Development, which deals primarily with businesses. The majority of complaints brought to us are from companies who have applied without success for financial assistance.

All in the family

When a man submitted his application for a loan under the Small Business Program, he was told that his application had been properly completed and his prospects looked good. Later he was told that his application would not even be considered, and he sought our assistance.

The nature of the problem was not difficult to identify. The complainant's surname was identical to that of a prominent B.C. politician, a man who was related to the complainant but with whom the complainant rarely had any contact. Nevertheless, the evident family tie caused a Ministry official to conclude that granting the complainant a loan or even looking at his application might be perceived as a conflict of interest.

We suggested to the Ministry that the complainant's application should be considered and evaluated according to the same criteria applied to other applications for the same benefit. If the complainant qualified for the loan according to these criteria, then he should receive the loan; if he didn't, he should not. The Ministry agreed that the earlier decision on how to handle the application had been inappropriate, and decided to consider the application on its merits.

Ministry of Social Services and Housing

Resolved	533
Not resolved	-
Abandoned, withdrawn, investigation not authorized	146
Not substantiated	301
Declined, discontinued	1,218
Inquiries	208
Total number of cases closed	2,406
Number of cases open December 31, 1990	501

Family and Children's Services Division

The Ombudsman's Public Report No. 22 (November 1990) identified the breadth of problems that can occur in a child, youth and family services system where responsibilities are divided among several Ministries. The report identified the need for legislative consolidation and administrative integration of child, youth and family services. Public Report No. 24 (February 1991) proposes legislative changes to the *Family and Child Services Act* and reiterates the suggestion that children's legislation be consolidated in one Act.

Many complaints received by this office about the Ministry's family and children's services require the involvement of other Ministry programs if resolution is to be achieved. Ministry social workers and contract caregivers depend on the education, mental health, alcohol and drug, youth corrections and community service sectors to carry out their child welfare and family support mandates properly. While Ministry social workers often bear the brunt of consumer complaints about services, they may not have direct responsibility for administration of required family and child support services which may be mandated by the *Guaranteed Available Income for Need Act*, the *Health* and *Mental Health* acts, the *Family Relations Act* and the *School Act*, or provided through Alcohol and Drug Programs of the Ministry of Labour and Consumer Services. While Ministry policy recognizes the need to respect the integrity of the family, Ministry social workers are greatly dependent upon other Ministries to implement this policy properly.

During recent years, faced with limited resources, the Ministry's family and children's services section has focused its attention on child protection services and adoption. The mandate to provide broader child welfare and family support services has increasingly been viewed as a cross-ministry one. This poses significant administrative challenges if integration is to be achieved.

The Ministry's reorganization (intended to bring greater functional specialization) has been generally well received but has placed significant pressure on line staff. This office has been impressed with the professional attitude of line staff and contracted caregivers during this period of organizational change. They have impressed this office with their dedication to serving children and their families. They appear to cope extraordinarily well with organizational change as long as that change is viewed by them to be motivated by a desire to improve services in the best interests of children and their families. Current positive initiatives by the Ministry include:

- increased levels of planning and consultation with key stakeholders in the child welfare field;
- Superintendent task forces to establish standards of Ministry social work practice and residential child and youth care;
- establishment of Ministry committees intended to improve contracting practices and to better define levels of care required by children and youth;
- establishment of a Ministry Committee to study work loads for line social workers;
- an emphasis on making more

professional the child and youth care and foster care functions; and

- the provision of leadership to the newly established Child and Youth Secretariat.

These initiatives are, however, often being taken without the benefit of a clear, statute-based framework that reflects the principles underlying this province's child, youth and family service system. Public Report No. 22, at page 10, set out a statement of principles of administrative fairness for children and youths. The first principle requires "a clear and consistent foundation of policy and practice linked to legislation and regulations so that the lawful authority for decisions or recommendations affecting special needs children, youths and their families is apparent to all and clearly defined administrative accountability within government is ensured".

This office welcomes the Ministry's decision to review and update the *Family and Child Service Act*. Positive initiatives by the Ministry at the practice and administrative policy levels should be guided by its enabling legislation so that children, families, contractors and line staff clearly understand the context of their relationships in child welfare matters.

Family Support Services

"Irreconcilable differences" with parents

A woman who was informally caring for a 15-year-old youth believed that the Ministry should be providing financial support to this out-of-home placement. She said that the youth had alleged abuse by her stepfather and had irreconcilable differences of opinion about religion with her parents. The youth was adamant that she would not return home.

We contacted the Ministry's district supervisor, who described the youth as a "good kid". The youth's family had previously been offered support by the Ministry through a contract youth care worker, but the parents had refused this offer. The youth's allegations of abuse (when she was much younger) had been corroborated by Ministry officials but there had been no recent incidents.

The district supervisor said that the Ministry was prepared to discuss support services to the youth and her family if they were approached. The Ministry was not, however, prepared to approve the youth's current living situation, which was not an approved Ministry resource.

We provided the complainant with information about the *Family Relations Act* and suggested that she could make an appointment with a Family Court Counsellor from the Corrections Branch of the Ministry of Solicitor General to discuss the possibility of mediation to resolve the family dispute or address the complainant's concerns for maintenance payments to support the youth while she was living away from her parents. The complainant made an appointment to see a Family Court Counsellor and we discontinued our involvement.

Delayed court date moved ahead

A parent whose child had been apprehended was frustrated by delay and worried about its impact on his young son.

When the child was apprehended, officials told the parents that they planned to keep him in temporary care for three months, but through a series of mix-ups, the court date set to determine whether the child would be temporarily in the Ministry's custody was set for four months in the future.

After three months the social worker indicated there was no further reason to keep the child in foster care, as the family problems had been resolved to the Ministry's satisfaction. Since the child was only two and a half years old, the social worker thought it best to return him to his parents as soon as possible. The court date, however, was still a month away.

The Ministry agreed with our proposal that their lawyer be requested to call the case early. The complainant obtained a new lawyer who was prepared to go to court at very short notice. When we called the parent 48 hours after he had made his complaint to us, he had his son home, sitting on his knee.

SkyTrain supervisor helps suicidal youth

A woman contacted our office on behalf of a 15-year-old youth. She said that the Ministry would not place the youth in her home because his parents did not want him living there. Nor would the parents let him live with them. The woman said that the youth had planned to commit suicide by jumping in front of a Skytrain the night before. She said that the youth was temporarily residing in a Ministry resource after the parents had asked Ministry staff to pick him up and take him away. The caller stated that the youth had previously been residing with relatives but had been asked to come home by his mother. When he returned home, she called emergency services and asked them to take him away. The Ministry then placed the youth in a group home. This had been followed by the incident at a Skytrain terminal, following which a Skytrain supervisor had contacted the youth's school counsellor in an effort to acquire assistance for the youth.

We contacted Ministry officials about these concerns. The Ministry staff subsequently informed us that the youth had been placed in a specialized foster home with a child care worker assigned to work with him. The youth was also being assessed by a psychologist, while the person who had called our office was being considered as a possible restricted foster home resource. During this period, there were several incidents in the foster home which required intervention by the youth's relatives.

Although the Ministry's initial plan was to have the youth live in a specialized foster home with child care support, mental health professionals involved with the youth apparently supported placement with relatives. The Ministry approved the relatives as a restricted foster home, and the youth was placed in their care.

Although there was a delay in the placing of the youth with relatives, we believe it is important that the Ministry thoroughly assess the options in such cases to ensure that the decision as to where a youth should live is in the youth's best interests. Although there were some initial delays in this process, we believed that the complaint was satisfactorily resolved.

Sibling sexual abuse alleged

A woman told us that the Ministry had failed to provide adequate support and services for her children. She said that her son had sexually abused his sister and had been taken into the Ministry's care, but Ministry staff seemed to be blaming her for the problem rather than including her or listening to her in the case management process.

We contacted the Ministry and Juvenile Services to the Courts (JSC) about the complainant's concerns. A series of planning meetings was arranged which involved the complainant. She subsequently informed us that additional resources were provided and that she felt she had the opportunity to be heard. She said that this resolved her concerns.

In several cases involving sexual abuse between siblings, we have found that JSC provides an invaluable service. The professionals involved have specialized training and skills in the area of sexual abuse and can often resolve many of the issues which continue to complicate and slow down the case-planning process. We have suggested to district office staff that, where the case involves sibling sexual abuse, they immediately contact JSC if they have not already done so.

Parents demand deletion of file information

The parents of two children aged 3 and 4 complained about an invasion of their family's privacy by Ministry of Social Services and Housing and contract personnel. The parents said that they had laid off their nanny after suspecting that their children had been abused by her. They reported their concerns to Ministry and police officials, who investigated.

The complainants' children were referred by Ministry officials to a counselling agency funded under contract to the Ministry. The complainants later agreed to enter into marriage counselling with the counsellor but then withdrew because of their dissatisfaction with the service.

The complainants subsequently discovered that a written assessment of the children and of their marital relationship had been provided by the counsellor to the Ministry. They disagreed with many of the observations of the counsellor and did not believe the information should be kept on Ministry files or those of the contract agency.

We spoke to officials from the Ministry and the contract agency. They confirmed that the primary purpose of the referral to the counsellor was to provide counselling to the children because of suspected sexual abuse by the nanny and to provide support to the parents. The Ministry did not have concerns about the parents' ability to provide for the safety and well-being of their children.

The initial position of Ministry officials was that they could not dispose of the contested assessment. They believed that the information, while largely subjective, might be of importance if future involvement by the Ministry became necessary. We confirmed with these officials that there were no protection concerns and suggested that the material concerning the complainants' marital situation be destroyed as it had no relevance to the original purpose of the referral to counselling. Ministry officials agreed with this suggestion.

The contract agency was not prepared to destroy any part of the assessment report, but did agree to keep it in a sealed, closed file with a written agreement to notify the complainants should it ever be opened. The file would be destroyed in seven years, pursuant to the provisions of the *Documents Disposal Act*. The complainants were told that they could document their concerns about the contents of the report for inclusion on the contract agency's files.

Local Ministry officials also agreed to review their procedures for information-sharing with contract agencies when a voluntary referral is made and no protection concerns exist. They agreed that clients should be fully informed about the nature of inter-agency information-sharing prior to deciding whether to accept an offered service.

In this case, the Ministry's initial attempts to provide a voluntary family support service backfired because of lack of appropriate communication during the referral process. The complainants reluctantly agreed to accept the compromise resolution, believing that the assessment report, in its entirety, should have been destroyed by both agencies. They told this office that they would never again seek help from the Ministry.

Placement of violent youth difficult

We received a call from the distraught father of a 17-year-old youth who was soon to be released from the adult ward of a psychiatric hospital. The father said that his son - described as a victim of past abuse and dyslexic - was dangerous and could not return home. He said that a community placement had not been developed by any of the involved Ministries, and he appeared confused about their respective roles.

We spoke to officials from the Ministries of Health, Solicitor General and Social Services and Housing. There was agreement that the youth required special services but disagreement about which Ministry should provide a residential out-of-home program. MSSH officials said they did not have an appropriate resource for this type of youth and questioned whether he was a "child in need of protection". The youth's probation officer acknowledged that the youth had "fallen through the cracks" in the system. Mental health professionals confirmed that the youth was a potential danger to others but suggested that he was not committable under the *Mental Health Act* and was unlikely to voluntarily sign himself into treatment in a mental health institution.

We discussed with MSSH officials the fact that the youth had, in effect, been abandoned by his parents, who had said the youth could not return home. The youth's father expressed frustration about his previous attempts to obtain support services for the youth and said that "they should turn him loose in Victoria".

During the discussions with the Ministries, the youth was arrested for making violent threats, appeared in court, and was remanded in custody. When we discontinued our involvement, the youth was in custody in the correctional system and plans were being explored for his eventual placement with a relative.

Child and Youth Protection

Abducted to Ireland

The mother of four children ranging in age from 3 to 11 told us that she had filed a court action for maintenance against her ex-husband about a month earlier. In response, her ex-husband had filed an action for summer access, stating that he wanted to have the children with him for the month of July. His application was successful. As a result, the children went to live with their father in July, and the mother was upset to learn that he and his sister had taken the children to Ireland. The woman said she had been in transition homes on two occasions for protection against her abusive husband and was concerned about her children. She said that the RCMP had been informed and that she had retained a lawyer in an effort to obtain a court order to take to Ireland to get her children back.

We suggested that the woman contact us about further involvement by our office after she had discussed the matter with her lawyer. When we did not hear back from the complainant, we contacted the Ministry of Social Services and Housing to determine the outcome of the complainant's efforts to have her children returned. The district supervisor informed us that Ireland's equivalent to the Ministry of Social Services and Housing had apprehended the children and turned them over to their mother. She had returned to British Columbia with the children to an undisclosed location. The complainant had written a letter to the Ministry's local office thanking them for the help she had received from them.

We believe that this case is an example of the co-operation that exists between the Ministry and its counterparts in other countries to ensure that children are not abandoned in high-risk situations. However, not all countries are as co-operative as Ireland was in this case. The United Nations Convention on the Rights of the Child encourages co-operation between countries to ensure the protection of all children. Article 11 of the convention speaks to the illicit transfer and non-return of children as follows: "States Parties shall take measures to combat the illicit transfer and non-return of children abroad. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements." Simply stated, this means that the state has an obligation to prevent the kidnapping of children abroad by a parent or third party, and to ensure the return of the child if kidnapping does occur.

The right touch

A couple told us that the Ministry had "over-reacted" to an isolated incident in which their 10-year-old daughter was alleged to have hit her baby sister, causing facial bruising. The couple complained that the Ministry was trying to force them to accept counselling and Ministry services.

The Ministry district supervisor informed us that the child had learning difficulties and was withdrawn and hostile. However, the parents were reluctant to seek professional help to deal with these difficulties. Because of the delicate nature of the situation, the district supervisor had assigned one of her more experienced social workers to review the case and work with the parents in an effort to achieve a satisfactory resolution.

We were subsequently informed by the couple that the social worker had met with them, had dealt with them fairly, and had been most helpful in offering support and assistance to correct the problems the family was experiencing. This resolved the couple's complaint about the Ministry's earlier actions.

This case demonstrates the skills required by staff when intervening with a family in child protection matters. The protection concerns cannot be ignored. However, skilled workers can often intervene in a way that empowers the parents to deal with difficulties that they may feel are beyond their control. Parents sometimes feel that social workers are a threat rather than a resource to provide help, support and assistance.

Live by the rules or stay away

A woman said that she and her friends were caring for a youth who had been put out of his home by his mother and stepfather. She said that they had contacted the Ministry, but the Ministry would not provide the youth with a foster home placement. The persons who were caring for him said that he could not continue to stay with them, as they could not afford to keep him.

The district supervisor informed us that the youth had a home to go back to and that the parents said that he could return if he was prepared to abide by their rules. Other professionals who had been working with the youth and his family informed us that given the circumstances, living with his parents was not a viable option for him. We discussed the matter further with the district supervisor and suggested that she contact the other professionals involved with the youth.

We were subsequently informed by the district supervisor that the Ministry had apprehended the youth and agreed to provide a foster placement for him until the concerns around the home situation could be clarified. She said that she planned to consult with the other professionals involved in an effort to achieve a resolution.

Mother fears loss of custody

A woman requested our assistance in ensuring that her developmentally disabled son's interests were represented in a contested *Family Relations Act* custody matter. The caller stated that the youth's father was seeking to overturn a previous order so that he could take his son to another province. She later informed us that the court had given the father temporary custody and that the father planned to place the child in an institution outside of British Columbia.

Although we did not have jurisdiction to investigate the matter, as it was before the court under the *Family Relations Act*, we contacted the Vancouver-Richmond Association for Mentally Handicapped People. We were informed that the Executive Director of the Legal Services Society had also been contacted. As there had been a delay in locating appropriate and willing legal representation due to the complexity of the case, a lawyer for the association agreed to represent the youth in the B.C. proceedings, with the Legal Services Society providing representation for the mother. The association also arranged for an advocate for the youth through an agency in the province where the youth was residing. The mother subsequently received temporary custody, and her son was returned to her care.

We often receive calls from individuals who feel confused and isolated by a complex legal process. Although we do not have jurisdiction to investigate complaints involving a matter that is before the court, we are often able to provide referrals to agencies or resources that can provide support and assistance.

Teenager refuses to return home

A woman called us to complain that "the system" was not acting to protect her four siblings, who were in their parents' custody. The caller told of her own past experiences in the home, alleging physical and emotional abuse by the father related to alcohol abuse. The caller said that she had been rejected by her parents and their church and had only informal links to her younger brothers and sisters. She was particularly concerned for her 14-year-old brother who, she said, was being forced to return home against his will after a period in care by agreement between the Ministry and the parents.

We contacted Ministry officials, who confirmed the caller's concerns about historical problems in the family. They said that a mental health counsellor was working with the parents and believed that positive changes were occurring which would benefit the children.

We were then contacted by the 14-year-old brother of the complainant, who had been placed by the Ministry, through agreement with the parents, in another home. He described past problems with his father and said that he would never return home as long as his father was there. The youth believed that the mental health counsellor was taking his parents' side by trying to encourage him to return home. According to Ministry officials there was no evidence to suggest that the two youngest children who lived at home were at immediate risk, and the 17-year-old daughter was preparing to move out on her own.

While sympathetic to the 14-year-old's reasons for not wanting to return home, Ministry social workers, citing the mental health counsellor's positive assessment of a change in the parents, initially took the position that the youth must return home. Following review of the youth's concerns, the Ministry and the youth's parents then agreed to extend the short-term care agreement. This resolved the complainant's immediate concerns.

Subsequently we were informed that the parents had separated, prompting a custody dispute under the *Family Relations Act*. A family advocate was appointed by the Ministry of the Attorney General to represent the children's interests. As the matter was now before the court, we discontinued our involvement.

Mother fears for daughter's safety

A 14-year-old boy who was brain-damaged had recently been expelled from school because of his increasingly violent behaviour. His mother, concerned for the safety of her younger daughter, asked if we could offer any help.

Our review of the Ministry's file revealed a lengthy involvement with the family. Over a number of years, professionals had noted their concerns about the family's inability to manage, given the stress involved and the son's very difficult behaviour. The complainant had placed the boy in the Ministry's care but had cancelled the short-term agreement when the foster parents, a skilled and trained special care resource, refused to continue with the placement because of the boy's behaviour.

However, the mother did not feel she was receiving support from the Ministry worker and did not have her own support system. When the Ministry cancelled a child care worker contract and the boy was expelled from school the mother asked that her son be taken into care. Out of desperation the mother left her son at the Ministry office, requiring them to apprehend him as he was at risk. Shortly thereafter the boy was placed, through the Ministry, in a specialized residential program.

We have maintained ongoing contact with the mother and the Ministry. It is everyone's hope that long-term plans may include the reunion of this family with the assurance that adequate supports can be built in to prevent any further breakdown.

Landlord suspected of abuse

A woman said that her daughter was living in a house with several other young people. She suspected that the man who owned the house took in youths as "boarders", possibly for the purpose of sexual exploitation. Although there had been no disclosure of abuse, she felt that the matter should be investigated.

We contacted Ministry staff responsible

for child protection. Support services were offered to the youths involved, and a community social worker referred the matter to a "community team" with a police representative. Although action could be taken against the man for having minors as boarders, the community team requested enforcement of the local zoning bylaw forbidding the use of the house for boarders.

We often receive calls from parents concerned about children who have left home and are living a lifestyle which may place them at risk. Although the Ministry may offer services, youths sometimes choose not to participate.

Parents sometimes look to the state to impose controls on youths to force them to return home or live in an approved resource. However, this can only take place if the youth is committed by two physicians under the *Mental Health Act* or is involved in criminal behaviour and receives probation or custody under the *Young Offenders Act*. For those youths who are not committable or are in difficulty with the law, the only option may be to provide options which youths will be willing to accept on their own initiative.

Surveillance suspected

The parents of nine children complained that Ministry staff had acted inappropriately by placing the couple's home under surveillance while investigating a child protection concern. The couple stated that two Ministry workers had been observed in a vehicle parked at different locations near the couple's home throughout most of the day leading up to an interview with the couple later that afternoon.

We contacted the Ministry's district supervisor and one of the workers involved in the investigation. The worker said that she and her co-worker had made only one visit to the area, and that was to interview the complainants. The district supervisor also stated that the Ministry does not use surveillance in the course of conducting child protection investigations.

We informed the couple that, as evidence to support their belief that their house was under surveillance by the Ministry was not available, we were unable to substantiate their complaint. We advised the complainants that the Ministry does not investigate criminal matters which may involve surveillance or other investigative approaches used by the police. If there is a criminal allegation, the matter is turned over to the police, who conduct their own investigation.

Child apprehended after brother's death

A woman told us that the Ministry had erred in apprehending her two-year-old daughter. She said that her infant son had died two weeks before and that the Ministry apprehended the remaining child while investigating an allegation that the woman might have contributed to the death of the infant and thereby placed her other child at risk. The woman said that she had a lawyer to represent her in court proceedings under the *Family and Child Service Act*.

Based on the information provided by the complainant and the fact that she had a lawyer to represent her in the court process, we suggested that she contact us if the matter was not resolved to her satisfaction. The complainant's daughter was subsequently returned to her mother's care when it was determined that the death of the infant was not an indication of negligence or abuse by the complainant which would have placed her daughter at risk. This resolved the woman's concerns.

Ministry staff sometimes find it necessary to take steps to ensure that children are protected while an investigation is being conducted. Although there were no specific protection concerns involving the child who was apprehended, the circumstances around the death of the infant were such that Ministry staff felt obligated to intervene until the matter was fully investigated. Changes to the *Family and Child Service Act*, as recommended in the Ombudsman's Public Report No. 24, *Public Response to Request for Suggestions for Legislative Change to Family and Child*

Service Act, would allow alternatives to be provided which could have eliminated the need to apprehend the child, based on the principle of using the least intrusive measures necessary to ensure the child's protection. There was no indication that staff had acted inappropriately in this case, as they are acting within the framework of the current *Family and Child Service Act*.

Criminal record check delays placement approval

A caregiver contacted our office to complain that the Ministry would not approve her home for a 14-year-old girl. We confirmed with the girl that she wanted to live with the complainant upon her imminent release from the Youth Detention Centre. Ministry officials stated that they intended to take the girl into care and to place her in a group home upon release. The girl had previously resisted placement at this group home and did not wish to return there. All parties agreed that she could not return home to live and required an alternate placement. The plan to move in with the complainant was supported by the girl's mother (the legal guardian) and her probation officer subject to approval as a foster home by the Ministry.

Ministry officials informed us that, based on a study done three years ago, they had some concerns about the complainant's home related to a criminal record check of the prospective caregivers. The complainant said she and her spouse would welcome the opportunity to discuss these concerns with Ministry officials. The complainant pointed out that their home had been approved for youth in the corrections system and had proven to be a stable resource during the past year.

Based on information we provided, the Ministry district supervisor agreed to request another home study be done immediately as the girl was due to be released within a week. Ministry officials quickly studied and approved the home on a restricted basis after reviewing past concerns. A care agreement was signed and the placement confirmed with the youth on the day of her release.

Mother seeks access to apprehended child

A woman contacted our office with a question about access to her child following an apprehension. She told us that the apprehending social worker had informed her that she would not be permitted access to her child before the report to court, which was a week away. The woman could not understand why she was being denied access. She said that she was willing to have access supervised if the Ministry felt it was necessary.

The district supervisor assured us that access was never totally restricted, except in some sexual abuse cases, and even then there were usually attempts made to permit limited supervised access by the parent. He suggested that the social worker might have been unfamiliar with this policy and agreed to reinforce it at his next staff meeting.

Although the Ministry was unable to arrange an access visit prior to the report to court, due to supervision problems, the woman was satisfied that the Ministry had taken adequate steps to correct the problem she had brought to our attention.

A traumatic apprehension

A man complained that the Ministry had apprehended his four children with the use of force and without involving the Band social worker. We contacted the Ministry's district supervisor and the Band social worker. The officials involved acknowledged that the apprehension was traumatic for the family, with the children becoming very upset at the prospect of being separated from their parents. Ministry staff said that they felt their decision to place the children with their grandmother helped relieve some of the anxiety that everyone had experienced.

The Band social worker said that she had been consulted at the initial stages of the Ministry's investigation and was under the impression that she would be consulted further if the Ministry decided to proceed with an apprehension. We understand that the Ministry and the Band are now working together to develop procedures to ensure that in future all apprehensions involve the Band social worker. Although we could not turn the clock back on the events that had happened on the day in question, we believe that clear policy in this area will prevent a recurrence of a similar situation.

We discontinued further investigation, as the question of the apprehension and the protection of the children was a matter for the court to decide. We advised the complainant that our office does not have the authority to investigate court decisions and that he should refer any questions he had about the court process to his lawyer. We informed the complainant of the steps taken by the Ministry and Band to ensure that proper co-ordination would take place in the future.

Convicted children and the right of confidentiality

A woman complained about the way the Ministry of Social Services and Housing had dealt with issues involving her son, now 19. She said her son had been charged with sexual assault when he was 14 and had been under psychiatric treatment since that time. According to the information provided, a social worker had informed a 14-year-old female resident of a Ministry resource that she was concerned about the youth's contact with the young man and had told her about his conviction when he was 14. The young man's mother told us that this was the fourth time that this had happened.

We contacted the district supervisor, who informed us that the youth was notified of the offence in an effort to ensure that she was not placed at risk through her association with the young man. The district supervisor informed us that the Ministry would continue to inform vulnerable wards unless there was some evidence that the young man was not a risk to other children.

We contacted the youth's therapist, who informed us that the young man had been under his treatment since childhood. He said that the young man was not a risk to other children and that he would prepare a letter to the district supervisor outlining his professional opinion. We spoke with the district supervisor about this, and he confirmed that this would take the onus off the Ministry to disclose further information to Ministry wards. The district supervisor subsequently informed us that he had received the letter and had circulated a memo to all staff outlining our discussion and the Ministry's position with regard to divulging further information. This resolved the complaint.

Although Ministry policy is silent on this type of issue, the *Young Offenders Act* provides a right to confidentiality for children convicted of an offence. The difficulty is in balancing the child's right to be protected against the youth's right to confidentiality. Section 38 of the *Young Offenders Act* provides:

> 38.(1) Identity not to be published.
> No person shall publish by any means any report
>
> (a) of an offense committed or alleged to have been committed by a young person, unless an order has been made under Section 16 with respect thereto, or
>
> (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offense
>
> in which the name of the young person, a child or a young person aggrieved by the offense or a child or young person who appeared as a witness in connection with the offense, or in which any information serving to identify such young person or child, is disclosed.

The meaning of the term "publish" has been the subject of some discussion. However, the broader definition has been applied and would involve any means used to pass on information about a young offender's identity.

Although this may be an isolated case, we believe that further clarification of Ministry policy is required to ensure that the

Ministry is acting in accordance with the terms of the *Young Offenders Act*.

Locked out by mother, child apprehended

A mother and her 11-year-old daughter complained that the Ministry had erred in apprehending the child after she was locked out of her house by her mother over a minor incident. The child had sought refuge at the home of a neighbour, who contacted the Ministry. The child said that the social worker from Emergency Services who had apprehended her had physically moved her from the house to his vehicle and restrained her with a blanket and a seatbelt in the car.

Both mother and daughter complained of the anxiety that this incident had caused and asked us to investigate the circumstances. The child had been returned to her mother's care four days later after the report to court. The *Family and Child Service Act* requires a family court review of the Ministry's decision to apprehend within seven days of the apprehension.

The child's mother stated that she was being taken to small claims court by neighbours who alleged that the child had not returned the teddy bear and other articles borrowed from a neighbour when she was apprehended. Both the mother and child were upset by this and felt that it was unfair.

The district supervisor responsible for the case informed us of the circumstances that led to the apprehension. As further review by this office would have provided no benefit to the complainant, we discontinued our investigation of this complaint. However, in this particular situation it might have been possible to consider alternatives to apprehending the child. Public Report No. 24, published by this office in February 1991, recommends changes to the *Family and Child Service Act* which would require that the Ministry exhaust all possible alternatives before carrying out an apprehension.

We contacted the emergency social worker who had apprehended the child. He stated that there had been no physical altercation and that the child went willingly to the car. He said that he offered her a blanket to keep her warm, as she had no coat. We recommended to the worker that, in the future, he document each child's response to the apprehension process. The absence of documentation about the child's response to the apprehension process is a problem that needs to be rectified. This is a critical event for the child and should be documented on the Ministry's file.

The question of the court action to recover the costs of the teddy bear and miscellaneous articles was outside the jurisdiction of this office. The Ministry offered to reimburse the neighbours for the cost of the lost articles, but the neighbours refused and insisted on pursuing a court action. We contacted the director of the Legal Services Society, who arranged to provide legal representation for the woman when she attended court. At court the judge dismissed the case.

Children in Care

Unhappy with foster parents

Our office supports the principle that young people should be involved, to the extent that they are able, in the making of decisions that affect them. Although we do not act as advocates for children, we make referrals to agencies that offer that service.

We were contacted by a 17-year-old who had been in the custody of the Superintendent of Family and Child Services since she was 13. She had been living at her most recent foster home for a year and was attending school and working part-time. She had recently had some disagreements with the foster parents and, after trying to discuss with her social worker her concerns about the foster care she was receiving, had left the foster home to stay temporarily with a friend. She called our office because she thought that her social worker was not listening to her concerns. She thought it would be helpful to have someone accompany her to a meeting with her social worker, to help ensure that the social worker took her views into account before making a final decision on where she should stay.

Our office put her in touch with a Reconnect worker (a street worker who tries to reconcile children with their families), who offered to help mediate at the meeting with her social worker. We also advised her that she could speak with her social worker's supervisor, who was willing to meet with her. The youth subsequently let us know that the Reconnect worker had been really helpful in achieving a resolution to the problems with the foster care she was receiving.

Runaway child held in police cells

A father expressed concern that his 11-year-old son had been held in police cells overnight after he had run away from a foster home. He said that the Ministry social worker had instructed police to hold the boy in cells.

According to information provided by the Ministry, the foster parents had gone to the police lock-up to take the child home, but he had refused to go with them. They were unable to contact the child care worker, as it was a Sunday morning. According to the Ministry, the social worker was unaware that the child was being held in cells. As there was no one to take the boy home, the police called in a supervisor to watch him while he was in police cells.

As a result of this incident the Ministry took several steps to rectify the matter. A meeting was held with police to clarify the procedures for dealing with young children. The district supervisor informed his staff that this was not to happen again. He also contacted the child's father and apologized for the error.

We report this complaint because it relates to the human element involved in the delivery of services to children. Errors sometimes occur. We have noted in this and other cases that when Ministry officials apologize for an error, it usually satisfies the complainant's concern. Although it does not undo the problem, it does restore dignity to the situation and provides a form of compensation to those who have been affected by the error. We believe that the district supervisor involved achieved a satisfactory resolution to what might otherwise have created permanent negative feelings.

Foster home under criticism

A woman complained that the Ministry had failed to investigate her concerns about the care her children were receiving in a foster home. She stated that the foster home was not providing the level of service expected of a Ministry resource.

The district supervisor informed us that the matter had been referred to the area manager for review, and we were provided with a copy of the Ministry's report which addressed the areas of concern. The complainant subsequently informed us that she was satisfied with the steps the Ministry had taken to resolve her concerns.

Persons adversely affected by Ministry decisions sometimes feel powerless and frustrated in efforts to have their concerns addressed. Where there are clear appeal procedures available to persons who have a complaint, satisfactory resolutions can often be quickly achieved. While the procedures to review the concerns of the complainant in this case are informal and internal, they can be very effective in resolving the majority of complaints raised by concerned parties. We find that some areas in the Ministry are more effective than others in providing access to district, area and regional officials in addressing complaints from client or family members.

Children transported without seatbelts

The mother of two small children aged 3 and 5 contacted our office with a complaint about transportation provided by the Ministry between her home and the foster home in which the children were residing. The 3-year-old, she said, was transported unescorted by a cab with no car seat or seatbelt restraint to and from home visits. She said that this upset the child and placed her at risk. She added that the 5-

year-old had been similarly transported between the foster home and his daycare. We advised the district supervisor of the problem and were subsequently informed that unescorted transportation by cab would no longer occur.

Ministry policy is clear that children must be transported with proper vehicle restraints but makes no mention of the age at which it is deemed appropriate for children to travel without escorts. Ministry officials advised us that Ministry staff are expected to use their own discretion in deciding at what age children can travel unescorted.

Generally speaking, the age of 12 is regarded as a legal threshold to an age at which limited independence is recognized. This is reflected in legislation such as the *Family and Child Services Act*, which authorizes police to pick up a child under the age of 12 who is acting illegally and return the child to his or her parents, and the *Family Relations Act*, which provides that a child over the age of 12 must give written assent to the appointment of a new guardian. To achieve consistency with these legislative provisions, it would appear reasonable as well for children under the age of 12 to travel with escort, although direction must be used for children over 12, depending on the level of maturity of a child.

Permission to leave foster home denied

Teenagers who are permanent wards of the Ministry often contact our office to request that we review a social worker's decision not to allow a move from one residential resource to another. Caregivers are not necessarily considered "parents" by some of these youths. Some youths actively resist being "parented" by alternative caregivers, and disputes can evolve about the nature of their relationship.

A 16-year-old called us to say that her social worker was not supporting her wish to be in an independent living situation. The youth said that her foster home of many years had been a good one but that recent problems had arisen when the foster parents suspected that she was pregnant. She said that she was not pregnant but wished to move out on her own.

The Ministry's social worker was reluctant to agree to the youth's request because her current foster home had been an "excellent resource" to the sexually abused youth for a number of years. The social worker believed that the complainant still needed adult support before moving into independent living. The social worker agreed to meet with the youth to hear her views and to discuss options for resolution of their differences. We encouraged the youth to do so.

We were later informed that the social worker and the complainant had agreed to another placement. The youth moved into a resource where she also had the opportunity to apprentice in the restaurant business. The social worker told us that the youth was "doing really well" in this resource. We closed this case as resolved in the hope that this youth's positive experiences in her former foster home would stand her in good stead for future challenges.

A youth's demand to be heard

A youth, 14 years of age and a permanent ward, told us that the Ministry would not place him back with his previous foster parents. He had lived in the foster home for several years prior to the Ministry's decision to place him for adoption in another province. When the adoption placement did not work out, he asked to be returned to this foster home. He was upset that the Ministry appeared not to be listening to him in making decisions about where he should live.

We contacted the Ministry of Attorney General about the possibility of appointing a family advocate to ensure that the youth's position was heard and his interests were protected in the proceedings. A family advocate was appointed, and after a number of assessments by professionals the youth was returned to the foster home, thus resolving his complaint.

The United Nations Convention on the Rights of the Child reinforces the fact that youths have the right to be heard in decisions that affect them. In this particular instance the youth seemed to have limited involvement in the decisions about where he would live. It should be noted that the Ministry seemed sincerely concerned about placing the youth in a situation which would be in his best interests for the long term, but without the youth's involvement in the process the placements were breaking down. We believe the principle of the right to be heard is fundamental to effective case management.

Father upset by "crisis planning"

The father of a 16-year-old youth expressed concern about lack of services for his son. He said that the Ministry of Social Services and Housing had not made a commitment to provide an appropriate resource and follow-up services for the youth when he was released from a mental health treatment centre. The complainant stated that he was no longer able to deal with his son at home because of his violent behaviour. He said that after a brief stay in a local psychiatric hospital followed by a group home placement that broke down due to violent behaviour, the youth was then moved back to his father's home, but this had proven to be unsatisfactory. He was then placed in the centre for psychiatric assessment.

After several weeks in the centre, the youth signed himself out. The centre could not hold him against his will, as he was not committable under the *Mental Health Act*. To be committed under the *Mental Health Act*, a patient must be certified as mentally ill by two physicians.

As an interim arrangement, the youth was placed in a hotel room with round-the-clock supervision by child care workers. After approximately one week at this location, he was charged with a Criminal Code offence for an earlier incident and was remanded in custody to the Willingdon Youth Detention Centre to be assessed by Juvenile Services to the Court. He was subsequently transferred to the mental health treatment centre again because of psychiatric problems. According to the complainant, his son was placed on medication, and as long as he took his medication he was not certifiable and could not be held against his will. Therefore he could sign himself out at any time. The charge that had led to the assessment was subsequently stayed.

As a result of a series of calls between the complainant, Ministry of Social Services staff, the centre and mental health professionals in the youth's home community, efforts were made to work out a plan that would allow the youth to return to the community and reside in a specialized resource capable of providing the care he required. A staff member from our institutional team in the Vancouver office agreed to monitor the planning process.

We were subsequently informed that the criminal charge which had been stayed earlier had been reinstated, apparently to provide a mechanism to force the youth to take his medication and to help him learn to become more responsible for his behaviour. A representative of the centre supported this plan, stating that this would provide a way of holding the youth against his will as there were no facilities for him in the community. We expressed strong concern that criminal charges would be used in this way when the youth had been diagnosed as psychiatrically ill.

A case conference was held by telephone with the participation of a staff member from our institutional team, the social work supervisor from the centre, the Director of the Mental Health Unit in the youth's local community, an education representative, a representative from the resource offering the services, the district supervisor of the Ministry of Social Services and Housing, and a probation representative. Through the court process a probation order was granted requiring that the youth report to his probation officer as requested and take his prescribed medication. He was also to participate in counselling as arranged by the probation officer. The youth was to remain in the centre for 30 days until discharge planning could be completed. Planning was to include the youth, the youth's parents, a mental health worker, and a representative from our office. As a result of the meeting it was agreed that a resource would be provided in the youth's community.

Over a period of months, the youth resided in a residential correctional facility and an adult mental health boarding home and then returned to the centre. A staff member from our institutional team attended a further interministry planning session for the youth to plan for discharge back to the community. The participants included: from the centre, a social work supervisor, the youth's psychiatrist, a senior administrative staff member, the youth's unit supervisor, the primary worker, and the youth's tertiary worker; from the youth's community, a Juvenile Services to the Court representative, the regional director for child and youth mental health services, the district director for Social Services and Housing, the youth's probation officer, the operators of a residential facility, and the youth and his parents (by telephone). The decision was made to place the youth in a residential facility which had substantive experience in dealing with difficult youths. Twenty-four hour supervision would be provided, and efforts would be made to have the youth work his way back into the local community and school system.

Although we concluded our involvement at this point, we continued to monitor the case, as it would be reviewed after a six-month period.

This case focused several concerns, including the difficulty in interministry planning for severely disturbed children, and concerns about long-term planning including the transition between services for children and services for adults. The Ombudsman's Public Report No. 22 examines the issues around interministry planning. The question of the transition between youth and adulthood has been raised in Public Report No. 24 and will be the subject of further consideration.

Although the youth's father was satisfied with the final outcome, he said he experienced considerable frustration at what he felt was a lack of co-operation in the system. He also felt left out of the planning process. The complainant said he felt that the only way he could be heard was by creating enough noise that someone would listen. He also said that planning seemed to take place only when crises occurred. It is this kind of experience that led to our recommendations contained in Public Report No. 22 and Public Report No. 24.

Confidentiality of report questioned

The Ministry's Inspections and Standards Unit (ISU) is responsible for ensuring that the standards and policies of the Ministry's Family and Children's Services Division are appropriately applied in practice. Periodically, the ISU is asked by the Superintendent of Family and Child Service to undertake a comprehensive review or audit where serious concerns are evident.

Following a serious assault by a youth in care on a staff member in a contracted residential youth program, the agency requested that a review be completed by the ISU. The Superintendent agreed to this request, and a comprehensive report was prepared to identify issues arising from this assault and to identify areas where improvements were required. The agency, however, was not permitted access to this report (which they had initially requested). The Ministry's position was that ISU reports of this nature are confidential documents for internal use only. This position reflects the need to protect the identity of individuals who may be negatively affected by the findings of an investigation and also ensures that there are no inhibitions to influence the process of comprehensive internal review where potentially serious problems might be evident.

The contract agency recognized and respected the need for elements of confidentiality in internal Ministry matters and suggested that sensitive material could be edited following review by our office.

Following meetings between the Ministry and agency representatives, an agreement was reached whereby the report's contents, relevant to agency concerns, would be discussed with them. In consultation with the agency, the Ministry agreed to outline procedures for any future joint investigations of this nature and to define appropriate access to information for the agency.

Placement for disturbed youth

The stepmother of a 15-year-old youth who had recently completed therapy for "sexual deviancy problems" expressed concern about delays in planning an appropriate residential placement for her stepson. The youth's family lived in a small community and had agreed with clinical advice from mental health professionals that the youth should not return home at this time.

According to the youth's probation officer, he had been placed on probation for stealing a small item, simply in order to obtain access to treatment through Forensic Youth Services. The youth had recently completed treatment through LINK, a residential program for juvenile sex offenders. He had been assessed as having an "ongoing paraphilia involving voyeurism, fetishism, fantasies about cross-dressing, and problems surrounding his own identity". The psychiatric assessment stated that the youth had "experienced a grossly disturbed early childhood with physical, emotional and possible sexual abuse occurring". The LINK administrators had informed the youth's parents that he was to be released immediately because of great demand for their beds, as indicated by an 11-month waiting list.

When we contacted the Ministries of Health (Forensic Youth Services), Social Services and Housing (Family and Children's Services) and the Solicitor General (Corrections), a consensual placement plan had not yet been developed. Ministry of Social Services and Housing officials questioned whether or not the youth was in need of protection under the *Family and Child Service Act* and said that they would need more time to find a suitable placement for the youth. When the youth's stepmother informed us of a potential resource in Vancouver, we passed this information to Ministry officials, who agreed to explore this option as quickly as possible. LINK program officials agreed to extend the discharge date until the assessment was completed. A few days later, Ministry officials agreed to contract the Vancouver resource to place the youth, thus resolving the matter.

When we told the youth's stepmother about the placement, she was greatly relieved. She expressed appreciation for the outstanding efforts of individuals from the Ministries involved but had strong concerns about the complexity of the system. She had concerns for youths in similar situations whose parents were unable or unwilling to act to ensure that their children's needs were met. We told her that we were currently discussing these matters with government.

From mother to aunt to apprehension

The aunt of a 15-year-old youth told us that she was concerned that the Ministry planned to return her nephew to his mother after discharging him from care in a Ministry resource. The aunt had cared for the youth for about 10 years and believed that he would run away, as he had no wish to live with his mother. She was especially concerned that the youth might harm himself, as he had attempted suicide in the past.

A few hours after we received the complaint, the youth called our office to say that he had been discharged from care but would not return to live with his mother. He said he was calling from a pay phone near his house. He told us that he did not like what his mother was doing to him and his younger sister and that his mother had turned his sister against him. He said that he would like to remain at the Ministry resource for a while longer until an alternative living arrangement could be found. He said that he was in the company of a Ministry social worker who was helping him move from the group home to his mother's place.

We spoke with the social worker, who said she wanted to meet with the youth and his mother to see if the differences could be resolved. We were subsequently informed that the youth was willing to return home and give it a try.

Approximately three weeks later we received a call from the aunt stating that the youth had moved in with her and her husband with a probation order requiring that he reside with them. The aunt stated that the Ministry would not provide financial support for his care as the youth's mother had legal custody.

We contacted the Ministry and suggested that there needed to be a cross-Ministry plan to deal with the question of where the youth should live. After a period of about six months, a decision was made by the Ministry to take the youth into care. The Ministry was subsequently granted permanent custody. The youth was placed in a Ministry-approved resource, resolving the dilemma faced by the youth and the families involved.

Although a satisfactory resolution was achieved, this case demonstrates the problems and delays that can occur when there are competing interests involving a youth, family members, and Ministries responsible for providing services. The problems and delays associated with this case are identified in Public Report No. 22, *Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*, and Public Report No. 24, *Public Response to Request for Suggestions for Legislative Change to Family and Child Service Act*. These reports speak to the need for an integrated service delivery system for youth and a need for legislative change to the *Family and Child Service Act* which will provide a more appropriate mandate for the Ministry of Social Services in the delivery of services to children and youth.

Caregivers claim contract termination unfair

A husband and wife complained to our office that their contracted services as caregivers to children and youth placed in the Ministry's care had been terminated unfairly. They had provided residential services to children and youth in the Ministry's care for 10 years and presented many positive testimonials concerning the quality of care provided by them. They said that they had initially contacted Ministry officials after a youth in their care alleged that the husband had made suggestive comments to her.

The complainants said that the youth had lied to the Ministry about the incident. They did not believe that the appeal procedure available to them was adequate or fair. They said that the area manager was expected to review the decision, which in effect meant that the area manager was reviewing her own decision, as she was responsible for the decision to terminate the contract. The complainants also said that they were confused about whether the Ministry's investigation was carried out pursuant to guidelines established in the Inter-Ministerial Child Abuse Handbook or the review guidelines established by the Ministry and the B.C. Federation of Foster Parent Associations. As a contracted home, the complainants were unclear about their access to the foster parent review mechanism.

Ministry officials confirmed that the investigation of alleged inappropriate comments by one of the complainants had resulted in termination of the contract. The incident was deemed serious enough to warrant this action in spite of the caregivers' lengthy and apparently positive experiences providing residential care to children and youth. Ministry officials cited the fact that many children and youth in care have been sexually abused. While we did not take issue with the merits of this decision, we did find some legitimacy to the complainant's concerns about the adequacy and fairness of current review and appeal processes available to contracted caregivers and foster parents.

We believe that the current review and appeal process for foster parents and contract caregivers should be strengthened to increase confidence that a fair and impartial hearing is provided when disputes arise with Ministry officials. This matter was addressed as recommendation #9(d) in the Ombudsman's Public Report No. 22, which identifies the need for "internal and external complaint resolution mechanisms available to residents, caregivers and facility operators" of residential child and youth care resources.

Foster parent's contract terminated

A foster parent contacted our office to complain about the way her services had been terminated by Ministry officials. The complainant's home had been a resource for troubled youths in the Ministry's care for about three years. The complainant said that Ministry concerns about her home were not raised with her until she received a letter terminating her contract. She said that disagreements had arisen with a social worker about planning for a particular youth. She said that this youth had not been visited by his social worker during the time he was in the foster home.

The complainant also expressed concerns about the fairness of the review and appeal process for foster parents. The local Foster Parent Association representative was not perceived by the complainant to be neutral or unbiased, and the complainant did not have confidence in the independent nature of current administrative review procedures.

This office suggested that the complainant meet with the Ministry's Regional Director to discuss her concerns. Following this meeting she informed us that the letter providing reasons for closing the home would be withdrawn from Ministry files. As the complainant said that she did not, at this time, wish to take in more youths, we discontinued our involvement but assured the complainant that we would continue to monitor concerns about the fairness of current review and appeal mechanisms for foster parents and contract caregivers.

Children in the Home of a Relative

Runaway moves in with aunt

The aunt of a 14-year-old girl called us with concerns about the lack of financial support to look after her niece, who had been living with her for two months. She explained that her niece, a permanent ward from Alberta, had run away from a foster home in that province to live with her aunt. She had settled down and was reportedly doing well in that home, but the aunt could not afford to support her without assistance.

Ministry officials confirmed that they had received an application from the aunt for child-in-the-home-of-a-relative assistance. A transfer of guardianship between Alberta and British Columbia was required, and Ministry officials were waiting for appropriate action by their counterparts in Alberta. While financial assistance was delayed, officials from both provinces supported the youth's placement with her aunt.

We contacted Alberta Social Services, and a supervisor said that there was a strike in that province by child welfare social workers and only emergencies were being responded to. We explained the nature of the problem and the fact that the lack of financial support might result in the youth being returned to Alberta. There was agreement that this would not be in the youth's best interest.

The next day we were informed by the Ministry's district supervisor that a call had been received from Alberta officials requesting that the Ministry provide support to the youth's aunt pending the end of the strike and the completion of the formal paperwork by Alberta officials. The district supervisor acted to speed up the process of studying the aunt's home as a restricted foster home, and an imprest cheque was immediately prepared. The complainant said that she appreciated the swift response by Ministry officials and was relieved that her niece was able to stay on in her home.

Rehabilitation and Support Services

Dependent adult punished with soap

In February 1990, this office received complaints from a variety of sources about the treatment an adult dependent person received in a day program funded by the provincial government. The concerns arose as a result of staff members of the program rubbing laundry soap across the mouth of the client. The complainants were dissatisfied with the response that they had received from both the program operators and the Ministry of Social Services and Housing (the funding agency). When our office became involved, the client had been removed from the program, but other individuals remained, as did the staff who were allegedly involved in the incident. For this reason the complaint was viewed as urgent and we investigated and reported our interim concerns to the Ministry within three days.

As well, the police began a lengthy criminal investigation. Crown counsel exercised its discretion to divert the cases outside the criminal justice system after the two individuals involved acknowledged responsibility for the offence.

Immediately after our interim report to the Ministry of Social Services and Housing, the Ministry removed its clients from the program and placed them in alternate settings for day programs. Thus the immediate problems brought to light by the incident were resolved. This case, however, was one of a series of investigations which raised many other issues regarding the government's responsibility for and practices in delivering services to dependent adults, and those general questions have been under review for the past year.

The government's initiatives in this area include a committee reviewing and making recommendations on policy, programs and legislation in the areas of abuse, substitute decision-making and guardianship, and a program to integrate the delivery of health and social services to the developmentally challenged. There are still gaps, however, and areas where it is necessary to clarify current practice.

We remain concerned that government line staff receive training and guidelines on their role as service manager for clients receiving services paid for by the government but actually delivered by societies, individuals and corporations. We are also concerned that there be standards for balancing the competing interests of client, caregiver, family and funding Ministry, that the government define and require the special skills necessary to provide service to these clients, and that there be clear responses in incidents alleging or inferring abuse of a client. We will continue to work with the Ministries on these questions (see Public Report No. 25, *Public Services for Adult Dependent Persons* - March 1991).

Special-needs services in short supply

A couple complained about the lack of services for their 16-year-old special-needs son. The mother said that as a result of a neurological impairment, the youth was prone to sporadic outbursts of violence, usually directed toward his teachers and other adults around him. She said that she could not cope with his behaviour any further and was concerned about the effect that the situation was having on their younger children in the home.

The couple said that the school board had advised them that there were no programs suitable for their son, and that the Ministry of Social Services and Housing had informed them that their son appeared to have fallen through the cracks of the system in the absence of programs that could address his needs. They had attempted to get assistance from the Mental Health Centre but had been informed that her son was on the borderline of being mentally disabled. Mental Health Services does not offer assistance to those who have been diagnosed as mentally disabled since birth. The youth's mother said that her son was born with a tumour on the hypothelmus at the base of the brain, a fact which predisposed him to epilepsy and, in turn, violent outbursts.

We were involved in the case for several months. During this time we attempted to identify a government ministry that would assume responsibility for case management. The matter was reviewed by the Inter-Ministry Children's Committee (IMCC). Although all of the professionals were sympathetic to the situation, no resolution was forthcoming. As a result of the IMCC meeting, an information co-ordinator was identified but no one had assumed responsibility for case management. The initial response of the Ministry of Social Services was that the Ministry uses the criteria of the American Association on Mental Deficiency - that is, an IQ below 70 and problems manifested during the developmental period prior to the age of 19. As the youth's IQ was considered to be above this level, he was not eligible for Ministry of Social Services resources for developmentally disabled persons. Two physicians with expertise in the area were selected to do a further assessment.

In due course, we received a copy of the assessment report completed by the two physicians. The report recommended a referral to Woodlands for psychological testing and a review of the medications, suggested options for placement of the youth, and expressed concern about the issue of what Ministry "should be responsible for developing/finding/funding" services for the youth. The assessment indicated that the youth should be eligible for mental handicap services provided by the Ministry of Social Services and Housing. The assessment also identified the fact that the youth required special classes with individual attention and tutoring to deal with his learning deficiencies. Finally, the assessment identified the immediate need for a one-to-one worker to provide family respite care and to deal with any further serious incidents. The assessment concluded by stating, "This certainly is a very complicated and challenging case which will require coordinated team effort by all concerned."

After approximately three months from the time of our first involvement, we were informed that the Ministry of Social Services and Housing was willing to take on case management responsibility. Approximately one month later we were informed that the child care worker had been assigned for 10 hours per week and that respite would be provided for the family through the local association for mentally disabled persons. After another two or three weeks had gone by, we were contacted by an agent for the family, who informed us that planning was moving very slowly and that there was a possibility that the child might have to be turned over to the Ministry as the parents could no longer cope. We had further contact with the Ministries involved and were informed by the school district that a plan was being put together for a summer program for the youth through the school district. There was some question about this, as the school district said they could not provide a one-to-one worker as the Ministry of Social Services funds this service. The viability of the plan depended on the availability of a one-to-one worker. As things had not progressed satisfactorily, we contacted the Ministry's regional director and outlined our concerns about the problems we had observed in the planning process.

We were subsequently informed that respite care had been approved and that the day program for the youth was being negotiated but there were no definite time frames at this point. Seven months after initial contact, we were informed that the respite service was now in place and that the planning for a school program for September was progressing satisfactorily. Just prior to the beginning of the school term we were informed that the intensive child care resource had a school opening for mid-September, but this was later delayed to October. We contacted the Ministry, stating that although the breakdown seemed to be with the school district component, we believed that it fell to the Ministry to provide an alternative and that the family needed to see some follow through on the part of the Ministry of Social Services. We pointed out that the family had been flexible in the planning process but that there was a limit to how long they could continue to deal with the delays and breakdowns in the planning process.

At the end of August, approximately seven and a half months after the couple had contacted our office, we were informed that the Ministry was implementing a day program for the youth through one of the local group homes until the school district program was available. The youth's mother informed us that they were very satisfied with the final resolution that had been achieved.

This case portrays the frustrations experienced by parents who become confused and frustrated by the inter-ministry issues involved in case planning for special-needs children. Public Report No. 22, *Public Services to Children, Youth and Their Families in British Columbia: The Need for Integration*, identified some of the problems associated with interministry planning involving the eight Ministries providing services to children and families. One of the key recommendations of the report was "that a single authority within government be established with a formal mandate, executive powers and adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration of publicly funded services to children, youths and their families."

In response to this recommendation, the government has established a secretariat for children and youth that has been given responsibility for co-ordinating services between Ministries. One of the secretariat's key tasks is to assess the organizational issues associated with the development of a single authority. The secretariat has been given a two-year time frame to develop its recommendations in this regard.

Income Assistance Division

During 1990, we conducted a review of the way we respond to complaints about the Ministry's Income Assistance Program. Prior to the Ministry's reorganization in 1988 and 1989 we investigated most of the complaints we received, as the Ministry's internal complaint handling mechanisms did not appear to be sufficiently responsive to the nature and urgency of these complaints. The reorganization has addressed many administrative problems which gave rise to complaints. In reviewing our present caseload, we can see that although the volume of complaints has not decreased, there has been a decrease in the number of the complaints which can be substantiated. Another change has been the recognition that it is part of the function of the Ministry's district supervisors to respond to clients who have complaints. As well, the Ministry continues to have a structured and legislated appeal mechanism which is available for issues involving the refusal, discontinuance, or reduction of income assistance.

In March of 1990, we began to screen complaints to see whether they were suitable for an internal resolution. Where appropriate, we requested that clients make an attempt to resolve the complaint by contacting the district supervisor, without our intervention. We told clients that if they could not reach the district supervisor, or were not satisfied with the district supervisor's response, they should contact us again. Of course, we continued to intervene wherever the nature of the complaint indicated that our assistance was necessary. We monitored the process carefully, and are pleased to see that these referrals to district supervisors appear to be an effective way of addressing the concerns of most clients. The result is that we are now able to refer back approximately 50 percent of the complaints we receive, and we investigate approximately 20 percent of the total intake. The remaining complaints are resolved directly with the Ministry as on appeal.

As a result, our investigators now have more time to devote to other functions which may be equally beneficial to Ministry clients. We have established a liaison with the Income Assistance Policy Division, with whom we expect to meet once every two months to discuss ongoing issues of concern. As well, during 1990 we met with regional directors and area managers in each of the ten regions of the province. We found this to be an effective means of opening the lines of communication so that a more positive working relationship could be established. Wherever possible, we used the opportunity of visiting these regions to meet as well with district supervisors and workers. We plan to continue this field work in 1991. We also expect to speak at training sessions for financial assistance workers and district supervisors. We hope that this will give us an opportunity to outline the kinds of concerns we have when we review a complaint and to discuss some essential elements of procedural fairness.

In 1990, we also began to compile detailed statistics about income assistance complaints. Essentially, these complaints relate the origin of the complaint (by region, area and district office) to the nature of the complaint and the way we responded to it. These statistics have provided some useful information both to us and to the Ministry about the complaints we receive. They reveal geographical and seasonal variations which can often be explained by local conditions. For example, in August 1990 we received a sudden and unusual increase in the number of complaints about a particular district office. Upon investigation, we discovered that because certain employment opportunities had become available locally, the district office had taken a firm approach with its employable clients. It was important for us to know that the increased complaint volume was not the result of bad management, but rather, the particular economic circumstances prevailing at the time.

In analyzing the kinds of situations in which we are most likely to be directly involved, our statistics indicate that, not surprisingly, we most frequently intervene in emergencies where other avenues may not be appropriate. Although we cannot provide emergency services directly to these clients, it is important that we be available when other avenues have failed.

We are now working with the Ministry to develop a joint statistical report once every six months which should provide the fullest possible picture of complaint and appeal statistics throughout the province.

Income Assistance for Adults

No heat, no food

A man complained that the Ministry had refused to provide his family with hardship assistance. His bi-weekly UIC sick benefits had been erratic in arriving, and as a result his hydro had been disconnected and the family had run out of food. The matter was made more serious by the fact that the family's oil-fired furnace would not function without electric assist. Thus the family was without heat or food.

The district supervisor explained that because the family's UIC income of $638 every two weeks was marginally above the income assistance rate for a family of five, the man did not qualify for income assistance. We suggested that the man might qualify for hardship assistance, a type of assistance the Ministry has the discretion to consider when clients do not qualify for regular benefits. The district supervisor felt that the man's income - or in this case, anticipated income - disqualified him from receiving hardship assistance as well.

We then contacted the Income Assistance Division, that section of the Ministry responsible for policy development, seeking clarification on this point. The Income Assistance Division confirmed that the man could be considered for hardship assistance. We communicated this information back to the district supervisor, who after consulting with his area manager, authorized payment for a Hydro reconnection and a $50 food voucher. The man felt this was enough to help the family manage until his next UIC cheque arrived. We also suggested that the man ask his MP's constituency office for assistance in sorting out his difficulties with the Unemployment Insurance Commission.

While this problem was resolved following our intervention, we continue to have concerns about the Ministry's practice of restricting district supervisor access to policy clarification through Income Assistance Division. Prior to the Ministry's reorganization, district supervisors could contact the Income Assistance Division directly for policy advice. They are now required to seek such clarification from their supervisor, the area manager. This arrangement seems to be causing some difficulties, especially if the relationship between the district supervisor and the area manager is strained. Had this district supervisor had direct access to policy clarification from Income Assistance Division, this problem might never have occurred.

No money for room and board with parents

A woman complained that the Ministry had refused to accept her rental arrangement with her parents. A single mother with one child and another on the way, she had been forced to move in with her parents because there was no other rental accommodation to be found. She explained that the relationship with her parents was strained, but that they had agreed to rent her two bedrooms, with kitchen privileges. However, the complainant's financial assistance worker had insisted that, regardless of the parents' intentions, Ministry policy stated that an income-assistance recipient living with her parents was eligible for "support allowance only", a limited amount of money.

We referred the woman to the district supervisor, assuming that the matter could be quickly clarified. She reported back to us that the district supervisor had upheld the worker's decision. We contacted the district supervisor to discuss the decision further. He confirmed that he had upheld the decision and explained that he would not authorize payment for rent unless the woman's parents could document shelter expenses related to their daughter's stay. As this would have had a severe impact on an already strained parent-daughter relationship, we referred the district supervisor to the Ministry's policy manual. Ministry policy allows income assistance recipients to make their own shelter arrangements, even when sharing accommodation with their parents. The policy does stipulate that if that arrangement is room and board, then the recipient is eligible for "support allowance" only.

The district supervisor described the policy as contradictory and chose to follow a section of the *GAIN Act* Regulations which precludes payment of shelter benefits unless actual expense is incurred. We felt this was inappropriate, as the district supervisor was in effect asking the "landlord" (parents) to prove increased shelter costs. The woman had already documented the cost of the rent required by her parents.

We contacted the Income Assistance Division to ensure that our interpretation of policy was correct, and then brought the matter to the attention of the area manager. The area manager had originally supported the district supervisor's decision, but after our call agreed to consult with the Income Assistance Division on her own. Following that consultation, she overturned the district supervisor's decision and arranged payment of rent for the woman and her child. However, the area manager explained that philosophically she had no difficulty with the district supervisor's decision, and had overturned it only because that was the recommendation of the Income Assistance Division. This concerned us, so we brought the matter to the attention of the regional director so that she would be aware of our ongoing concerns related to this type of problem. It would appear that the issue would have been resolved if the district supervisor had been able to access policy clarification directly through the Income Assistance Division.

Access to IA file denied

A welfare rights advocate was concerned that his client was going into a GAIN tribunal hearing without adequate information regarding the Ministry's case. The income-assistance recipient's benefits had been terminated by the Ministry. The Ministry alleged that she had received funds from the father of two of her children but had failed to declare the income. The advocate had requested access to the woman's income-assistance file in order to prepare adequately for her appeal, but had been denied.

We had serious concerns about the fairness of refusing access to information in the context of a GAIN appeal. We recognized, however, that free access to income-assistance files might be inappropriate, as such files may contain information of a sensitive nature.

We contacted the Ministry with our concerns related to establishing limited access, requesting that the Ministry establish a procedure for releasing all documents related to a particular decision under appeal. We did allow that such disclosure should be limited with respect to child welfare concerns on file, as well as identifying information.

The Ministry responded, saying that the current practice did allow access to "those documents on file which are needed for a Tribunal hearing and are relevant to the issue being appealed", although the Ministry continued to "reserve the right not to disclose certain sensitive information, such as child welfare, fraud investigation and third-party information." However, our experience indicated that this was not common practice in the field. We wrote back to the Ministry requesting that the right to limited access be incorporated into Ministry policy.

The matter was resolved when the Ministry agreed to amend the Programs for Independence Manual, incorporating the right of an income-assistance appellant to have ready access to relevant information from his or her file. The policy amendment will, however, include the right of the Ministry to claim privilege on sensitive information such as third-party fraud investigation and child protection information.

Not intoxicated, just disabled

A man came to our Victoria office stating that he had no money for food and no place to stay. He said that he had taken his rent receipt to a Ministry office, but when he was told to return later for an appointment he had an altercation with staff there and was escorted out by police and told not to return.

The man told us that he had received a serious head injury in an industrial accident in Ontario and had a workers' compensation claim pending. He said that prior to receiving the head injury he had been employed in a well-paying position and had been active in the community. However, since his injury he had experienced difficulty dealing with frustration and often would threaten people to try and get them to listen to him.

We contacted Ministry officials who had been involved with the complainant in the past. The difficulties associated with the head injury were recognized by the Ministry, but as the complainant did not require institutionalization and found it difficult to follow through with community plans, little more could be done than offering income assistance benefits which he had previously received. We were told that he had attended the wrong Ministry office on the day in question and that this had led to the altercation and police involvement. Following our discussion, the area manager arranged to have the complainant seen immediately by the district office, and benefits were granted.

We also contacted the Ontario Office of the Ombudsman about the man's concerns regarding delays in processing the workers' compensation claim. He has since established contact with the Ontario Ombudsman office in an effort to resolve this issue.

On the surface it appeared that this was a straightforward question of access to income assistance benefits. However, the case demonstrates the kind of difficulty that persons with disabilities may have in obtaining access to essential government services. The complainant talked openly about the way he was treated by professionals, including the police and community agencies, as his disability in some ways resembled intoxication. This was complicated by the fact that frustration only created further verbal aggressiveness. A person who will listen, combined with patience and understanding, can be effective in breaking this cycle. The video "Person to Person", described at page 21 of this report, will assist Ministry officials to deal more effectively with persons with disabilities.

Advocate votes against client

A woman complained that the Ministry had terminated her benefits, alleging that she was involved in an undeclared common-law relationship. She had appealed pursuant to the *GAIN Act* Regulations, but the tribunal had ruled against her. Upon discussing the problem with the woman, we found that her nominee to the tribunal had also acted as her advocate and had actually filled out the appeal papers on her behalf. Evidently, she was unable to read or write. This nominee had described the relationship in question as common-law on her appeal form. We further found that the nominee/advocate had spoken on her behalf at the tribunal hearing and then voted with his colleagues in a unanimous decision denying her appeal.

We contacted the area manager, who agreed that the tribunal had been compromised by the fact the appellant's nominee had also acted as her advocate. This situation was resolved when the Ministry agreed to strike a second tribunal in order to consider the appeal afresh.

WCB award terminates income assistance

A man explained that after a long battle with the Workers' Compensation Board, he was now receiving a commuted pension in the amount of $4,140.48. However, he had been told that this award would result in the termination of income assistance and the loss of his Ministry-sponsored medical coverage for at least one month. As he had a number of medical expenses related to his disability, he felt the cancellation of his medical coverage to be extremely unfair. He felt penalized for having been granted a Workers' Compensation Board pension.

The Income Assistance Division, which is responsible for formulating Ministry policy, told us that the Ministry had no policy related to commuted WCB pensions. As a result of our contact, the Ministry developed such a policy, considering the commuted pension a "financial award". Under Ministry policy, income-assistance recipients are permitted to apply any financial award towards their asset exemption. As this man was designated handicapped, with a dependant, his asset-exemption level was set at $5,000. Thus the problem was resolved. He was able to keep his full commuted pension while continuing to receive full benefits from the Ministry, including medical coverage.

Income Assistance for Youth

As reported in our 1989 Annual Report, the age of majority in B.C. is a year higher than in most other Canadian provinces, where it is 18. For the purposes of eligibility for income assistance under the *Guaranteed Available Income for Need Act*, persons are considered as dependent minors up to the age of 19 years.

We reported last year on our concerns about unclear administrative policy and inconsistencies in practice when legal minors apply for income assistance. Ministry policy now recognizes that 17- and 18-year-olds may legitimately live independently from their parents. In most cases parents are willing and able to help support their children as they move towards independence. It is often more constructive to consider them as "young adults" rather than "children in need of protection". Like adults, these youths are subject to the realities of the job market and may find themselves out of work and unable to support themselves. When their UIC expires, they may apply for income assistance. In some cases retraining or educational upgrading may be the preferred option to ensure long-term independence. Parents may not be in a position financially to support their children to live independently.

We still receive complaints from young people that they have been refused income assistance because of their age. Age alone should not preclude the eligibility of older adolescents for income assistance.

When parents agree with a child's wish to live independently, or when a youth is moving away from a "marginal" home situation and parents are unable to provide financial support, it may serve the best interests of the youth to be assisted by the Ministry's income assistance programs. Child welfare programs, in their current form, may have little to offer older youths who are not wards of the Superintendent of Family and Child Service. As indicated elsewhere in this Annual Report, this office believes that services to youths who are in transition to adulthood require special attention as part of the *Family and Child Service Act* review and the comprehensive review of services being carried out by the Child and Youth Secretariat.

We have at times suggested to Ministry staff that when a financial assistance worker has concerns about the eligibility of a 17- or 18-year-old for financial assistance, and when the youth or her or his parents do not believe it is in the youth's best interests to return home to live, a social assessment is useful in order to determine the most appropriate plan. In effect, this social assessment can serve as the first level of internal review and can act to reinforce the principle that decisions should be made in the youth's best interest. A good social assessment, ensuring that the views of the youth and her or his parents are fairly represented, may often eliminate the need for a later formal appeal to a tribunal and help to ensure the provision of appropriate youth services.

During the coming year this office will continue to monitor the youth services sector and will be supportive of efforts to improve integration of the related services available in and across Ministries.

Young mother seeks help in relocating

An 18-year-old youth called our office because she had been refused income assistance by the Ministry. She said that she had a seven-week-old baby and wanted to relocate but required financial assistance to do so.

When we spoke to the Ministry's financial assistance worker we were told that contact had been made with the youth's father, who had told the Ministry that she could return home. We were told that the complainant had recently missed an appointment and had no long-range plans, and that there was a two- to three-week wait for non-emergency appointments in that office. The financial assistance worker could not recall if the complainant had been advised of her right to appeal.

We advised the complainant of her right to appeal, and she suggested that we speak to her band social worker, who had been trying to help her. The band social worker told us that the complainant would be better off living off the reserve in the local town. She explained that the youth's father, who had alcohol problems, was prepared to support his daughter's move.

We informed the Ministry's district supervisor of the band social worker's assessment and recommendations. She agreed to review the situation and set another appointment for the youth. The youth was subsequently granted income assistance, and the matter was resolved.

Too young for income assistance

An 18-year-old youth complained that the Ministry of Social Services and Housing had denied him financial assistance. He said that he had received no information about his right to appeal.

We spoke to Ministry officials, who agreed to tell the youth about his right to appeal but stated that the youth would only be given enough money to return to his parents' home in another province.

We informed the youth of his right to appeal and the Ministry's offer to assist him to return home. The youth decided to appeal the matter because of problems at home. The first appeal was to the area manager who had been involved in the original decision to deny assistance. The area manager found the youth to be ineligible for regular income assistance benefits, in part because he was under 19. Following this finding, the youth decided to accept the Ministry's offer of assistance and returned home.

This office then discussed its concerns about the area manager's written decision denying the appeal. We did not believe that the youth was ineligible because of his age. Upon review, the area manager agreed that the wording on the appeal form was unfortunate and that age did not constitute ineligibility for financial assistance. In this instance, however, we agreed that return to his home was most likely in the youth's best interests.

Filling the gap till the paycheque arrives

Youth sometimes complain to us that they have been denied assistance by the Ministry without the opportunity to explore possible options which would resolve their concerns. This is of particular concern when the custodial parent is not accessible or the youth does not want to involve the parent in the decision. In this type of situation, it is sometimes necessary to request a social assessment by the Ministry's family and child services office. Through this social assessment the Ministry can determine the most appropriate steps to take to ensure that the youth receives essential services.

An 18-year-old youth complained that the Ministry would not provide financial assistance for him, even though he had no place to stay. He said that he had been living away from home for about eight months and had recently acquired a full-time job. However, he had received no pay yet, and the friends he had been living with were moving out of their apartment that night. The youth said that the Ministry's financial assistance worker had informed him that he would not receive assistance until she spoke with his custodial parent. This posed a problem, said the youth, as his father, the custodial parent, was temporally assigned to a work-site which was inaccessible by telephone.

We contacted the Ministry's district office about the youth's predicament and suggested that the Ministry consider a short-term alternative until the parent could be contacted. After further consideration, the Ministry agreed to provide a voucher for the youth to stay at a local hostel. When informed of this alternative, the youth said that he felt this would provide the assistance required until he received his first paycheque, which would enable him to rent his own place.

A difficult transition to independence

A 16-year-old youth contacted our office stating that she had requested financial assistance from the Ministry but was told that she must either move into a foster home or return to live with a parent. The youth informed us that two years earlier she had planned a 10-day Christmas visit with her mother in another province. On the way there, she found a letter from her father to her mother stating that he did not want his daughter to come back. She said that she had subsequently received letters from him saying that it was okay with him if she did not come home. She said that living with her mother did not work out because of her mother's drinking problem and physical abusiveness. She said that her father had established a relationship with a woman who had four children and felt that returning to her father was not a reasonable option.

We contacted the district supervisor for the Ministry office responsible for this area. He noted that Canada Manpower has job-training programs for 16-year-olds and said that the youth would have to learn that the world does not owe her a living and that she "can't direct her own traffic at 16." Having said that, he stated that if she became involved in a training program she might be eligible for supplementary support on income assistance. He suggested that a job in a fast-food restaurant might be a possibility, although the youth's age would be against her and she would have to show she was motivated to do something for herself. He further said that he was not interested if her aim was to get welfare and to "party". He noted that the foster home program is for kids who can't live at home because of abuse but "not to board kids with no plan in mind." He said that unless the youth was really at risk, she would have to learn on her own. If she showed initiative, the Ministry might respond.

We contacted the youth about the options available to her. First we discussed the job-training possibility. She said she had contacted Canada Manpower and had been provided with information about how to get a job and prepare resumes. Once she got a job, it would be possible to develop a schedule for job training. Second, we raised the possibility of contacting her father for financial assistance. She said she had talked to her father earlier about this, but he had said no. Third, we discussed the possibility of filing for maintenance under the *Family Relations Act*. She said she had spoken to a lawyer who said that he would discuss the matter with a family court counsellor. Fourth, we raised the possibility of appealing the Ministry's decision to reject her application for income assistance. She said she had spoken with the worker about this, and although he felt that she had a slim chance of winning an appeal he would assist her in filling out the appeal kit.

We contacted the youth's father, who said that she could live with him and his family and that the other children would have no problems with her. However, he said he did not want her coming into the home and upsetting the other children and that she would have to live by his rules. He said that she had gone back to live with her mother six months after a woman with four children moved in with him.

In the meantime the youth had made other living arrangements. She said she was not prepared to return to her father's home. She was also informed that her appeal was denied by the area manager. The youth subsequently moved in with her brother and had acquired part-time employment babysitting. However, as her brother was newly married and living in a one-bedroom home, this was a temporary arrangement. The Ministry approved payment to the brother for a "child in the home of a relative" (CIHR) on a temporary basis.

Approximately two months later we were informed that the Ministry would not approve CIHR assistance unless the Family and Child Services Section did a current social assessment. The youth's father was interviewed by a worker from the local office in the father's community. He said he would not sign the forms necessary to continue the CIHR payments and that the youth could live with him and his family in their three-bedroom townhouse in Burnaby. He informed the worker that the youth was welcome there. We were informed that the worker felt the expectations in the home were not unfair based on the discussion with the youth's father and his spouse. The district supervisor said that the youth could not say she did not have a home, as the worker felt good about the home.

The youth later called to say that she had been informed that her CIHR benefits had been denied. She said that the information her father had given the social worker was untrue, as he was living in a trailer in a campground behind a motel and there was no way he could provide a home for her. She said that his spouse was still living in the house. We asked the youth if she knew of anyone that could confirm this, and she said that her grandmother was aware of the arrangement.

We contacted the grandmother, who told us that she did not know what the youth's father's living arrangement was. We contacted the worker who had interviewed the youth's father. She said that there were some facts which might provide support from the youth's perspective. We subsequently received a call from the Ministry stating that the youth's father had called the social worker stating that they had staged the interview at his spouse's residence. He said he was in fact living in a trailer, not with his spouse and her children, as he had informed the social worker.

We contacted the area manager about the circumstances of this case. The area manager said he would review the Ministry's position. The following day the youth called us to inform us that she had been advised that payments for CIHR had been approved. An independent living worker was assigned to help her develop skills to seek full-time employment. We were subsequently informed that the youth was working full-time and was on an independent living program set up through a local community services agency. The youth said that she felt that her concerns had been resolved.

There is no question that dealing with issues involving youths seeking independence is a difficult problem for Ministry staff. On the one hand the parents may be stating that they want the youth to return home, but this may not be a real alternative. On the other hand the youth may be refusing to accept traditional services such as foster care. Social workers are then placed in the position of mediating a resolution which is acceptable to all parties. This is a time-consuming process which may take the social worker outside his or her traditional role under the *Family and Child Service Act* in providing "child protection". We believe that efforts should be made to develop a specialized service in offices which can respond effectively to the needs of youth who are experiencing difficulties during the transition from being a dependent child to becoming an independent adult.

Setting up home for the first time

A young woman of 18 told us she needed help in establishing a residence independent of her family. She was sharing a bedroom with her young child and two other children who were being looked after by her mother.

After contacting the Ministry's district supervisor about the situation, we suggested to the young woman that she make an appointment to see a social worker. We were later informed that the Ministry had assessed the situation and approved financial assistance so that the young woman could establish her own residence. She also told us that she had enrolled in school in an effort to complete her high school education.

This case provides an example of the Ministry's ability to provide transition services for a youth approaching the age of 19. Based on the assessment completed by the Ministry, it was determined to be in the best interest of the young woman and her child to establish independence from her immediate family. We believe that Ministry staff in this district office demonstrated that they were sensitive to the special needs of youths in transition.

Ministry of Solicitor General

Resolved	538
Not resolved	-
Abandoned, withdrawn, investigation not authorized	75
Not substantiated	488
Declined, discontinued	538
Inquiries	80
Total number of cases closed	1,719
Number of cases open December 31, 1990	330

Corrections Branch

Youth Issues

For the second year in a row, the leading complaint among young offenders continues to be the Branch's "no-smoking" policy - an undoubtedly healthy and progressive step, yet one which continues to be a major source of irritation and frustration for both residents and most staff in Youth Centres.

We have noticed a general improvement in the keeping of progress logs at certain Youth Centres this past year. The regular recording of observations by staff can be extremely important for case management and are absolutely essential for understanding the development of some critical incidents. A number of Centres had been doing a very good job of recording their observations about each youth's progress. We regard it as a positive step that other Centres have now caught up and are maintaining this positive standard. It often strikes us that Adult Corrections could take a lead from the youth system as far as the maintenance of individual progress logs is concerned.

Task Force

This past year we noted an increasing number of complaints and reports about peer abuse or victimization in both Solicitor General operated facilities and contracted private facilities. We were uncertain whether this represented an actual increase in victimization or simply heightened sensitivity to the issue.

Victimization or bullying among young people is not unusual. Natural though it may be, it is abusive by definition, and its effect is severely aggravated in a correctional setting. Although Correctional Centres are under close supervision to prevent such activity, we were convinced by the frequency and the seriousness of such occurrences and by the letters and calls from anxious parents of victims that we needed to address this issue. A youth should not have to be afraid of being beaten by other youths when he or she is sentenced to a correctional facility.

This issue is not a new one for youth correctional staff and planners. Centre directors meet together three to four times a year, and apparently the subject of victimization had been on every meeting agenda for the last two years. The Ombudsman's office decided to establish a Task Force which would involve, in addition to our own staff, correctional personnel, representatives from other youth-serving ministries such as Health and Social Services and Housing, private facilities, and youths who had actual experience within the system.

The work of the Task Force is now well under way. While the chances of solving the problem so that victimization is totally eliminated are slim, we all must try to achieve the greatest possible control of the situation. The results of this Task Force's work may be very important for the well-being of some young people in our society.

Outreach

As previously reported, Ombudsman staff had been asked to take part in the orientation which each staff person was scheduled to undergo at the new Fraser Regional Correctional Centre. We were involved in six such sessions between May and July of 1990. Our presentation focused on the history and role of the Ombudsman, with emphasis on our work in provincial institutions. In December, we accepted a similar invitation to meet with newly hired staff and "old hands" in preparation for the opening of the new Burnaby Correctional Centre for Women.

The Ombudsman's office is also once again involved in Justice Institute training for new Correctional Officers, sharing an instructional hour with the Division of Inspection and Standards.

We have been involved as well in other training programs, including the Canada Employment and Immigration Commission sponsored program at Malaspina College for prospective correctional workers from distinguishable minority groups.

The lightning rod factor

After reading the 1989 Annual Report of the Ombudsman, the Deputy Director of a correctional institution noted that we had neglected to mention the "lightning rod" function of our office which, in his view, should share equal billing with our other roles.

He went on to relate how effective our office can be when staff in the institution are faced with an angry, frustrated and potentially violent inmate who has had some request turned down or a punishment awarded or has been the recipient of some other negative action and seems ready to go "off the wall". When he is told to call our office and does, the result is almost always a calmer, more rational inmate.

Even though we may not do anything at the outset of the call, the chance simply to "ventilate" to an outside, independent authority in a pressure situation can provide a useful benefit for the inmate who feels trapped in an institutional setting.

* * *

One issue worth revisiting is that of inmate committees or regular resident meetings in Correctional Centres. Such forums have a great deal of practical value in resolving institutional issues in addition to the personal value of permitting inmates to participate in the activities that affect their lives. Some staff may find such a prospect threatening. We have heard allegations that certain staff members will actively discourage any discussion about inmate representation if serious consideration is to be given to the creation of such a forum, even to the point of threatening transfer from a Centre should an individual argue for such a position. Where this view exists, it is certainly unfortunate. What better way could there be to encourage open communication and ensure that those who have to know are aware of what is occurring among the inmate population?

A few years ago, the Drost Inquiry at the Lower Mainland Regional Correctional Centre recommended that greater attention be given to "the establishment and maintenance of a tier representative system whereby complaints and disputes may be expressed and discussed at regularly scheduled meetings". We find this principle of open communications between the administration of a Centre and the inmate population to be a worthwhile and workable one in any kind of correctional setting. Most Centres recognize the value of such an instrument and use it wisely. There are a few holdouts who have yet to fully realize what a benefit it could be to their institution.

* * *

We have observed that some Centre Directors are posting on staff bulletin boards the copies of monthly summaries they receive concerning complaints against the Centre dealt with by the Ombudsman. We encourage this practice, as line staff who have been involved in the processing of a complaint often have no way of knowing for certain what became of that issue in which they may have a personal stake. Posting these summaries also gives line staff a better understanding of the variety of issues dealt with by this office and a better understanding of our role as impartial investigators rather than as advocates for any one party involved in a specific complaint.

Review of inmate grievance procedures

After dealing with numerous inmate complaints, the Ombudsman's office initiated a general study of the grievance process in local Correctional Centres. It was our belief that an effective grievance system would improve inmate-to-staff dialogue, encourage greater awareness by staff of the grievance issues, promote consistency of local orders, and reduce the cost of complaints being forwarded prematurely to the Division of Inspection and Standards and to this office.

We initiated a detailed study at the Lower Mainland Regional Correctional Centre and the Vancouver Pretrial Services Centre. These two institutions allowed us to compare an old established unit with a relatively new centre.

We had heard concerns from inmates in many secure Centres that complaints to institutional authorities had been "lost" or gone unanswered. Other inmates feared retribution for complaining. Many of the persons who contacted our office needed basic information on how to make a complaint and what choice of alternatives was available to pursue a remedy.

The Regulations under the *Correction Act* provide for a consultative approach initially by the inmate, who may request to meet and discuss a matter with an officer or the director. The officer or director must meet with the complainant as soon as reasonable and practical and inform the complainant within a reasonable time of the decision made. Alternatively, the inmate may make a written complaint to an officer, director, district director or regional director, who must have the complaint investigated within seven days. This investigation may be done by the officer in charge of the unit in which the inmate is confined or by the director. The complainant is to be advised in writing of the results. In addition to the consultative approach and the more formal written complaint, a person may write to the Director of Inspections and Standards, who must acknowledge receipt of the complaint in writing, investigate, and advise both the inmate and any officer named in the complaint of the results of the investigation. Contact with the Director of Inspections and Standards is privileged, with the result that mail may be sealed and not read by the authorities.

Our review found these Regulations to be adequate, generally. However, there was very little we could do to audit the paper trail and to tell how many complaints were being handled. It was not possible to determine whether the system provided by the Regulations was working effectively.

The Corrections Branch does recognize the administrative principle that all discretionary decisions are subject to review. An effective system will screen those complaints that deal with local issues from those that should be dealt with by District or Regional Directors. It is not the purpose of the Ombudsman's office to become the main complaint processor for inmates in custody. Rather, our purpose is to prompt the Branch to deal with its own complaints in a timely and responsible manner.

We are pleased to note that this year the Corrections Branch has adopted our suggestions concerning a complaint form. They have also taken steps to ensure that the intent of the Regulations is being met in the grievance procedure. When our office receives a complaint, we are now able to determine what steps the complainant took initially to resolve the issue and how the Centre responded. Inmates who now want to grieve a matter will have the practical tools available to follow what the law provides.

Escapee wins a day off

A man who had escaped lawful custody was recaptured by the Surrey RCMP and returned to a provincial jail to complete his sentence. When his release date approached, he complained to our office that the date should be earlier, as no calculation had been made for the time he had spent in the RCMP lockup after his recapture.

The Surrey RCMP office confirmed the complainant's custody date with us. He was entitled to have that day count against the total sentence he was serving. We communicated this information to the Records Officer at the Lower Mainland Regional Correctional Centre, who agreed to revise his record of the complainant's time served, as a result of which the release date was moved forward by one day.

Locked up day and night

An inmate was brought to a disciplinary hearing for offending the rules of the institution by placing unapproved telephone calls to an outside party. Because this was his second offence, the disciplinary panel took off 10 days of earned remission, suspended telephone privileges for 30 days, and imposed a lock-down in the inmate's cell for 125 hours.

When the inmate contacted us, he told us that his work in the kitchen started at 4:30 in the morning and finished at 11 a.m., after which he was locked up until lunch and all afternoon and evening as part of the 125-hour lock-down imposed by the disciplinary panel. He considered this application of his punishment to be excessive.

We discussed the matter with the chairman of the disciplinary panel, who was the Director of Operations at the Centre. We noted that the Correctional Centre Rules and Regulations state that confinement in a cell is to be served on weekends, holidays or evenings. There is no provision for these additional hours in the cell to be served in the morning or afternoon. The inmate accepted the fact that serving only evening hours would extend the number of days on which the discipline was imposed. We noted that, for most inmates receiving disciplinary hours, the problem of being locked up in the afternoon would not become an issue, as this was ordinarily a work period.

After reviewing the situation, the Director agreed to ensure that the complainant's work assignment was changed to the normal daytime period and that the lock-up would be served in the evenings until the total number of hours was satisfied.

Gold prices on the rise

In a four-month period, an inmate had been moved among several Correctional Centres in the province. In the course of one of the moves, a gold ring disappeared from his personal effects.

When the inmate complained to us about the loss, he estimated the value of the ring to be $600. On later consideration, he provided a second estimate of $740. We were able to trace the ring on its journey as far as Vancouver Island Regional Correctional Centre, at which point we ran out of leads. We communicated this information to the complainant, who, after careful third thought, now valued the ring at $840.

Officials at VIRCC thought the ring might have been given to the sheriffs who transported the inmate to his next stopping point, but the sheriffs had no record or recollection of receiving the ring. The VIRCC finally accepted responsibility for the ring's loss.

There then followed a lengthy discussion about the ring's value, while the inmate expressed increasing frustration about the wait for restitution. At this point, the inmate located a receipt which purported to put the value of the ring at $1,007. The Centre checked with the jeweller who signed the receipt, who indicated that this type of ring could not have possibly cost that much and that the receipt was for a different ring.

The final chapter of this story was written when the inmate accepted $500 to cover his loss, seven months to the day he first contacted us.

The sweet-toothed forger

An inmate placed an order for canteen items (tobacco, candy, etc.). His signature on the order form authorized staff to deduct the $20.25 cost of his order from his inmate account, which was done. The man was transferred to a camp two days later, and subsequently he contacted our office to say that although he had left the prison before the canteen orders were distributed, his account had not been credited with the $20.25.

It is not unusual for inmates to be moved before receiving canteen items they have ordered. To ensure that trust accounts are properly credited in these instances, the institutional policy is to take the actual order and the order form to the Business Office, where staff adjust the account balance and return the order to stock.

A check of the records revealed the canteen order had been given to the complainant, as demonstrated by his signature for its receipt. However, he was already at camp before the normal canteen distribution time, and a close look at the signature raised questions about its authenticity. Although it was just possible an officer issued the order to the complainant ahead of time, we suggested it seemed more likely in this case that another inmate, perhaps noting that the staff member was new to the unit, copied the complainant's signature and received the canteen goods.

The complainant's account was credited with the cost of the order.

Stamping out the weed

On October 1, 1990, the provincial government implemented a no-smoking policy in all government buildings. Correctional Centres operated by the province were included in this directive. The incidence of smokers in jails, where the hours are long and pleasures few, may well be higher than anywhere else in society, and it wasn't long before we received a complaint from a Community Correctional Centre resident that the new policy was unfair.

Government employees who had previously smoked at work have either given up during office hours or go outside to smoke. While this is an inconvenience to some, it is nothing like the hardship faced by inmates. While government workers can go home and smoke after work, if they so choose, inmates do not control their daily routines, making it often impractical and sometimes impossible for them to go outside to smoke.

Recognizing that inmates should have the right to choose whether or not they smoke, the Assistant Deputy Minister of Corrections secured an amendment to the controversial policy to allow smoking in designated areas inside Correctional Centres. The change recognizes the right of the individual to exercise choice while at the same time respecting the right of non-smoking residents to clean air, although in less rigorous fashion than in other government buildings.

Following the policy change, the Director of the Community Correctional Centre restored inside smoking privileges in a designated area, while requesting that smokers voluntarily go outside as much as possible.

No butts about it

During one of our visits to a youth-correction facility on a Wednesday afternoon, a resident asked to meet with our officer. The resident said he had been accused of collecting cigarette butts and had been strip-searched by staff on two occasions. Although the strip search revealed no evidence of cigarettes, staff were convinced that the resident was guilty. The resident said he was given zero points for that time period of his token economy program and also had to perform two full days of work program as a consequence of the alleged offence. He told us the accusation of butt-collection was untrue and that it was not fair that he be required to spend the upcoming weekend on work program.

We conducted an investigation immediately in order to make a determination before the weekend penalty was imposed. Our investigation confirmed that the complainant had been accused and strip-searched, but that he had not been given any zeros for the time period in question. Instead, he had been ordered to do one day of work program as a consequence; the other required day of work program was the result of another incident when the resident had been observed to be out of bounds.

On Friday afternoon our officer spoke with the facility's program co-ordinator, who agreed that there was insufficient evidence by which to judge whether or not the complainant had committed the action of which he was accused. In consideration of this fact, the co-ordinator assured us that the complainant would not be required to serve the ordered day of work program. The other day of work program would remain a requirement. The resident was pleased with the outcome and believed he had been treated fairly.

No wad left for tobacco

An inmate at Kamloops Regional Correctional Centre complained that he was not being provided with "welfare tobacco" - the free issue provided to inmates who have no financial resources at the time they come into a centre. He had no funds in his inmate account and could not understand why he was being denied a privilege that other inmates, similarly impoverished, were enjoying.

Our investigation determined that the inmate's welfare tobacco privileges had been suspended in accordance with institutional policy. After signing a cheque to a person outside the institution that would exhaust his prison account, the inmate was warned by Corrections staff that if he issued the cheque he would not be entitled to welfare tobacco for three weeks, being the approximate amount of time the money sent out would have lasted the inmate had he kept it in his institutional account and used it for regular canteen purchases. Despite this warning, the inmate chose to mail out the money.

We decided that the inmate had received fair warning and that the three-week waiting period was reasonable. There was no evidence to support the inmate's claim that it had been necessary to send the money. On the contrary, the person who had received the money seemed somewhat confused as to why it had been sent, as he had neither requested nor needed it.

Sticks, stones and adjectives

At our request, Corrections officials investigated a complaint that a member of a Centre's nursing staff had responded to mild teasing by an inmate with extremely insulting remarks. In a written statement the nurse readily agreed to having made the remarks (while denying having used one particular adjective), and apparently saw no reason why her behaviour should be subject to censure. The officials, however, regarded the nurse's role in this and other incidents as inappropriate and unprofessional. Disciplinary action was taken.

A civil tongue

At our request, a Senior Correctional Officer investigated an inmate's complaint that an officer had been verbally abusive toward him.

The investigation found the officer to have behaved unprofessionally. He was reprimanded, and he sent a brief written apology to the inmate, who had been transferred to federal custody in the meantime.

An inmate who uses indecent or abusive language may receive an institutional charge. We believe a similar standard of conduct should apply to staff. This is not only fair; professional conduct contributes to the smooth running of the institution through the example set.

Last-minute visit arranged

During the winter months, when the number of inmates requiring admission from the courts along with those assigned to intermittent custody sentences was greater than the available space in the Kamloops region, an interior prison was forced to make more space available by transferring some inmates to other secure centres.

One of those to be transferred complained when he was unable to arrange for a final visit with his year and a half old daughter and his father prior to the move. Although the visitors were prepared to attend the prison the night before the transfer, the prison staff had not informed the inmate soon enough for the visit to be arranged. Usually, visits are scheduled a day in advance.

Three facts were evident: the transfer was to satisfy the needs of the centre for more space; the inmate could have set up the visit if he had been advised of the transfer one day earlier, as it was his unit's regular night for visits; and he had not used up his quota of visits for the week. For these reasons, and in view of the age of the child and the separation caused by the transfer, we found the request for a visit compelling. We asked the institution to reconsider its position, and it agreed to waive the requirement to schedule a day in advance. The complaint was thus resolved.

Inmate gets back pay and transfer

In farm work camps, the pay scale ranges from $3 to $5 per day. Inmates are assigned to a variety of work experiences, including the farm operation as well as educational and rehabilitative groups. The complainant said his wage had been reduced to $1 per day for a period of four weeks even though he continued to work.

When we determined that the information was correct and that the intent was to motivate the inmate to apply himself to the work program, we discussed the matter with the Director of the camp. He told us that he had now ordered the back pay to be made up to the inmate and had spoken to the officer in charge of wage rates in order to clarify the camp's policy. The wage of $1 per day was limited to those persons who were assigned to work but who were sick.

An ailing inmate

The inmate said he was feverish and achy, had sores in the mouth and an extremely sore throat, and was unable to keep any food down. He added that he had been taking daily medication for a thyroid condition. He had seen a community doctor prior to admission, but nothing had been prescribed for him by the doctor who saw him during his admission procedures. What he now needed, he told us, was medical treatment for pneumonia. After confirming that the complainant had been a recent patient of two doctors in the community, our office could only obtain assurances from the prison hospital staff that they would provide a soothing gargle and ensure a doctor's appointment in the morning. Although the patient had brought antibiotics, cough syrup and thyroid medication to the prison with him, these medications could not be given without a doctor's approval, and no doctor was at the Health Care Centre to deal with the problem at that time.

Our concern was that because the inmate was known to the staff, they had presumed him to be suffering from withdrawal symptoms and might have overlooked his real medical needs by ignoring his recent medical history in the community. After our intervention the inmate was re-examined, but the thyroid prescription was not renewed for about a week. We addressed these issues to the Corrections Branch's Director of Health Services.

While the intake form appeared to cover the community history, the medical examination had not been completed during the intake, apparently because the patient was viewed as rude and volatile. While his difficulty convincing staff of the seriousness of his current condition was unfortunate, he shared some responsibility for a less than adequate intake assessment.

Assault yes, aggravated no

An inmate at the Lower Mainland Regional Correctional Centre was concerned about the accuracy of his criminal record. One entry indicated a conviction on a charge of aggravated sexual assault. The "aggravated" part of the charge implies that violence constituted a part of the criminal offence.

His record had been considered by the Corrections Branch in its compilation of sentence management and case management reports. This was significant, since an offender's classification affects his management in the correctional system. Violent offenders are often dealt with differently from non-violent offenders. In this instance, the complainant believed that his classification, which was based partly on the aggravated assault conviction, was preventing his being granted a transfer to a minimum-security camp. He had been trying for some time, without success, to have the inaccuracy corrected.

Our investigation found that inaccuracies did indeed exist in the inmate's criminal record and in several files and reports concerning the inmate. It is entirely plausible that the inmate's classification was affected by the incorrect references to a conviction on a charge of aggravated sexual assault.

We advised the appropriate authority of these errors, which were subsequently deleted from all files and documents concerning the inmate.

"High risk" resident disputes description

During a regular camp visit, we encountered a resident who complained that certain correctional documents mistakenly referred to him as "suicidal". As a result, he was also classified as "high risk" - a categorization that would adversely affect his chances of being considered for residence in a community correctional setting or a temporary absence release.

Our investigation revealed that the controversial information had been incorrectly entered on the resident's records at another institution. Administrative action rectified this error by adding a notation on file, and the "alert" signal was removed from the computer program.

No money for dentures

A resident at a forest camp complained that he could not cover the cost of replacing his upper plate.

The resident was earning money and normally would have been expected to pay at least a portion of the cost of new dentures. However, the complainant's ability to do so was diminished by the fact that he was helping to support his family with the money he earned working at the camp. The matter was considered by the camp administration, who decided to pay for the dentures in recognition of the resident's situation.

Segregated pending assault charges

Several inmates were held in segregation units pending an investigation by the local RCMP after a serious incident in custody occurred. After being isolated in this manner for over 24 hours, the inmates complained to us that required procedures were not being followed.

The Correctional Centre Rules and Regulations state that an inmate confined in a cell or a segregation cell by the director shall be released to his regular program "within 24 hours of confinement unless the inmate is, arising out of the circumstances giving rise to the confinement, charged with an offence under an enactment of the Province or of Canada". The inmates in question had been reported to the RCMP for allegedly assaulting staff. However, the RCMP had not completed their investigation within 24 hours, and charges had not been laid. Normally the RCMP would report their findings to Crown counsel, who decide whether charges will be laid, but this process ordinarily takes more than 24 hours.

When delay occurs, the Director is required by the Regulations to release a person who has not been charged. However, the director is understandably reluctant to return a person to normal living units following an assault on an officer which is serious enough to invoke the criminal process. A Director may charge an inmate with a breach of the Correctional Centre Rules and Regulations; however, inmates have argued successfully in court that they are unfairly exposed to double punishment if they are charged in the same incident with assault under both the Regulations and the Criminal Code. A Director who wishes to ensure the safety of his staff in such circumstances may follow the alternative route of changing an inmate's status from segregation under section 35 to separate custody under section 38.1 of the Regulations.

We proposed to the Corrections Branch that they revise the section of the Regulations dealing with the laying of criminal charges so that it more closely parallels the requirements on a Director who segregates a person pending examination for the purpose of transferring the inmate to a provincial mental health facility. That is, a Director would be required within 24 hours to ask the RCMP or local municipal police force to conduct an investigation for possible criminal charges. The Director would then have the authority to retain a person in segregation for longer than 24 hours when he had taken steps to report the matter or consider transferring the person to remand pending a Court disposition on the charges.

The Corrections Branch responded to this suggestion by referring the proposal to the Adult Institutional Services analyst who is working on draft amendments to the Regulations.

Privacy, please

An inmate at a Regional Correctional Centre complained about the lack of privacy accorded him and his wife during her visits. He was trying to mend a "shaky marriage", he told us, and both he and his wife felt uncomfortable discussing their personal problems in a visiting room full of other people. We had some sympathy for the complainant's problem and passed his concerns along to the Deputy Director of the facility. He agreed that, under the circumstances, sensitivity to the inmate's wishes was required, and said that he would schedule a private meeting for the couple in an interview room, providing a room was available.

Old coat gets a second life

Administrators of a forest camp were considering granting approval for a resident to attend Alcoholics Anonymous meetings outside the camp in the local community. As street clothes would be needed for attendance at the meetings, the resident's mother brought him some blue jeans and a leather jacket, which were placed with the inmate's personal effects pending final approval for the program.

Before such approval could be given, the inmate was transferred to another forest camp. While in transit at an overnight stop at a Regional Correctional Centre, the inmate inspected his clothing and discovered a number of severe tears in the lining of the jacket. He believed that this damage had been done purposely. Once he arrived at his new camp, he complained to us about the condition of the jacket.

We confirmed with the inmate's mother that the jacket lining had not been torn at the time she brought it in. It seemed to us that the most expeditious manner of dealing with the situation was not to try to assess responsibility but simply to find someone willing to repair the lining. The director of the Regional Correctional Centre agreed that since his Centre had a tailor shop, the jacket could be sent there for the necessary repairs.

When the tailor received and inspected the jacket, he concluded that the tears or separations in the lining were simply the result of the jacket's well-advanced age. Nevertheless, it was repaired as well as possible and returned to the owner.

Fear of flying

Transfers of inmates from one institution to another are a common occurrence in the correctional system. These transfers occur either by motor vehicle (a sheriff's van, for example) or by aircraft. Our office received a complaint from a Vancouver Island Correctional Centre resident that he was scheduled to be transferred by aircraft to a Lower Mainland institution the following day, despite the fact that he was afraid of flying.

Understanding that flying can be a very upsetting experience for some people, our office contacted the appropriate sheriff's office to discuss the matter. Normally, because of time constraints such as those imposed by a scheduled court appearance, little can be done to arrange alternative transportation. In this case, however, it became apparent that a separate ground transfer from the Island institution to the Lower Mainland was scheduled for another inmate the next day. Once this was realized, the airline reservation was cancelled and arrangements were made to transport the individual in the van. By reducing the number of personnel required to carry out the transfer and by eliminating the cost of the airfare, the government probably saved money too.

Volunteer faces charges

A resident at a Women's Correctional Centre complained that a volunteer conducting a native program at the Centre was unsuitable. The matter was referred to the Centre's administrative staff, who launched an investigation into the resident's concerns. Information received from other community services revealed that the volunteer was facing charges of sexual assault, so the volunteer was asked to stop conducting programs at the institution. The volunteer's contract with the Centre was terminated.

Right decision, wrong reasons

When a person complained about a decision to deny a temporary absence application to attend a marriage-enrichment seminar, we investigated the process involved and the reasons for the decision.

We found that the panel making a recommendation to the director had made the right decision but for the wrong reasons. The denial was the correct decision because the inmate's common-law wife had become involved with an ex-inmate and a marriage-enrichment seminar was not the place for the two of them to work out the implications of this change in her personal loyalties. However, the reasons cited for the denial - including the inmate's denial of guilt for the charges of which he had been convicted, and the length of sentence remaining (he was eligible for parole) - were irrelevant to the matter being decided.

We expressed concern that the process allowed no opportunity for inmates to comment on negative information placed before the panel. The District Director responded to our concerns and suggestions for change by implementing a pilot project which would enable inmates to respond to any negative comments or unanswered questions prior to the panel's sitting. We believe this step will improve the quality of the decisions made by the panel and safeguard inmates' rights to a fair hearing.

Inmate subdued by gas

Attempting to attract the attention of a unit officer, an inmate rapped on the door glass. Much to his surprise, the glass broke. He apologized and cleaned it up. When he was told he would be charged and segregated, he thought the officers were trying to harass him. He refused to attend the disciplinary hearing, and his cell was entered by a response team and he was subdued with force and tear gas. When the disciplinary panel concluded, the inmate was found not guilty of wilful damage. When he complained to the Director about the force used to subdue him, he was not satisfied with the reply and asked our office to investigate.

Unfortunately, the videotape record of the cell entry was not available because of battery failure. We proposed regular maintenance be followed to keep the machine operational. All other records and staff were made available to our review.

We reviewed the process and the reasons behind the officers' actions. The inmate's reputation as an expert martial arts practitioner and as a high escape risk played an important part in the way the officers had reacted. We criticized the failure to give the inmate the opportunity to pay for the damages to the door prior to the disciplinary hearing, as there was no dispute over who broke the glass. We questioned the amount of tear gas used but found it was not excessive. As the subject had an extensive medical record, we requested that team leaders record their review of the medical opinion on the use of gas prior to the cell entry and suggested that alternative methods for subduing persons with current medical conditions be reviewed The standard practice had been for inmate to be ordered to lie face down on the floo before correctional officers entered the cell in this case, because of the inmate's medical condition, it would have been more appropriate to have ordered the inmate to lie on his bed.

The Acting Director of Operations agreed with our proposals and implemented those that were not already in place.

Escorts for medical appointments

Some inmates of a Regional Correctional Centre had contacted our office to complain they had not been escorted to scheduled medical appointments in the community. One man complained of missing physiotherapy treatments for an injured hand; another had had surgery a week earlier, and his scheduled follow-up examination by the surgeon was cancelled.

The need to maintain adequate staff levels to carry out all the functions in a Centre and to be prepared to cope with the unexpected, while at the same time avoiding the cost of over-staffing, presents a difficult challenge. However, appointments for inmates to see outside physicians and therapists are made to fulfil medical needs, and in our opinion the institution has an obligation to ensure these needs are met.

We consulted with the Director of Health Services for the Branch, to whom some health professionals had already voiced their concerns. Following her discussions with the District and Regional Directors, a commitment was made to ensure that staff would be available for medical escort duties.

Punishment didn't fit the crime

An inmate of a Regional Correctional Centre pointed out to us that the institution's policy, as given to the inmates in the Inmate Information Guide, stated that anyone "charged and found guilty of violations against Section 28, Correctional Centre Rules & Regulations shall be restricted to closed visits for 30 days following the infraction."

A "closed" visit is one in which the prisoner and his visitor are separated by glass and communication is by telephone. An "open" visit permits visitors and inmates to talk freely, and appropriate physical contact is acceptable. The complainant believed the policy was unnecessarily punitive and also contrary to the Regulations. We agreed.

The Regulations charge Correctional Centre Directors with providing space and time for visits and ensuring that visits do not lead to security or management problems; however, section 33(2) of the Regulations also states that, unless an inmate has been disciplined for an offence directly connected with a visit - for instance, receiving contraband from a visitor, or causing a disturbance in the visit area - his visiting privileges "shall not be restricted or revoked" by the disciplinary panel. In our view, the 30-day restriction subverted the clear intent of that section of the Regulations. Altering the policy would not interfere with the Director's ability to restrict an individual inmate to one or more closed visits for adequate reasons.

The complainant had simultaneously contacted the Corrections Branch's Division of Inspection and Standards. The Division obtained a legal opinion which concurred with our view. After reviewing the question, the institution's management amended the policy. The Division of Inspection and Standards subsequently circulated the legal opinion to all Correctional Centres and directed that all internal visit policies should be reviewed and amended if necessary.

Coroner's Office

Deaths linked to injections of air

A woman accused the Coroner's Office of incompetence in its inquiry after a healthy 16-year-old boy undergoing dental implant surgery died in the dentist's chair. Having learned that two other deaths had occurred during the same type of surgery performed by the same dental surgeon, the woman felt the Coroner's office had been negligent in its efforts to establish the cause of death.

During our examination of the Coroner's investigation, the tragedy of these three deaths became clear. The first death was that of a middle-aged man who was operated on in the dentist's Vancouver office. The operation involved baring the jaw bone, drilling into the bone and implanting a titanium cylinder - a standard and proven procedure. Due to an absence of any recognized medical cause, coupled with a history of a heart ailment, the conclusion was that death was due to heart failure. The Coroner's review of the case appeared to have been reasonable.

Six months later came the 16-year-old's death - same dentist, but different community and different Coroner. The fact of the youth's record of good health prompted the involvement of the Coroner's medical investigator, whose prior experience included eight years as an operating room registered nurse. A complete investigative team was assembled, including senior experienced pathologists and engineers qualified in the field of dental surgery equipment. At that time neither the circumstances nor the dentist's name alerted the medical investigator to the first death.

Three months after the second death, which was still under investigation, a third death - this time of a healthy woman - was reported. This was in the Vancouver area and under the investigative responsibility of the Coroner who attended the first death. As these two deaths had occurred under similar circumstances during operations by the same dentist in Vancouver, the medical investigator was assigned to conduct an investigation. Immediately after this was done, the medical investigator connected all three deaths by the dentist's name, his use of two offices in different communities having been previously unknown to the Coroner's office.

The Coroner's medical investigator interviewed two other patients who had been operated on by the same surgeon and who had survived after suffering difficulties. Similarities in the timing in the process when these difficulties occurred prompted the medical investigator to explore the theory of hypoxia. At this point, an out-of-province anaesthetist contacted the Coroner's Office to explain a research program then under way which involved deaths during anaesthesia. Upon learning of these three deaths and of symptoms suffered by two other patients, the anaesthetist came to Vancouver. The Coroner assigned his medical investigator and file material to the research project.

When the investigations were concluded, they revealed death to have been caused in all three instances by hypoxia, an air embolism caused by pressurized air, used to flush the drilling during the dental implant process, entering the exposed blood vessels and thence the heart. This use of air under pressure, as employed by this dentist, was not advocated by the dental profession or by the equipment manufacturer.

The findings were reported to the dental profession so that appropriate steps could be taken to ensure that misuse of pressurized air was not likely to occur in the future. Clear directives to dentists followed, and appropriate publications about air embolism during dental implant surgery and surgical procedures have been distributed.

This office concluded that the Coroner's investigation had been thorough. At the time of the first death, the Coroner's Office had no reason to suspect a link between the use of pressurized air and the death of the patient. The second investigation was still active but incomplete at the time of the third death, which elevated the intensity of what became one investigation into three deaths. The offer from the out-of-province anaesthetist, whose expertise led to a conclusive determination of the cause of all three deaths, was entirely fortuitous, and came at a time when the Coroner's Office was already exploring the possibility that the deaths were linked to the use of pressurized air. While we could understand the devastation brought to the three families, no fault could be found with the work of the Coroner's Office.

Inquest derailed by court action

A man complained about a delay in holding an inquest into the hospital death of his sister. The death had taken place three years earlier, and the complainant believed the Chief Coroner's Office was causing the delay.

The woman, a convert to the Jehovah's Witness faith, had given birth to twins by Caesarian section. A blood transfusion had been recommended by attending physicians but had been refused by the woman. Relatives of the deceased, not content with the Coroner's position that a Judgement of Inquiry met the legislated requirements of the *Coroners Act*, requested that an inquest be conducted to ensure that the refusal had been voluntary. Following discussions with the Solicitor General, the Coroner agreed. Under legislated authority and in the public interest, the Solicitor General ordered an inquest be held to ensure full public exposure.

The Chief Coroner took immediate steps to hold the inquest. However, the deceased's husband and the Jehovah Witness community then took action to attempt to prevent the inquest. There followed a lengthy series of legal manoeuvres that made it impossible to hold the inquest right up to the time of the complaint to our office. Under such circumstances the Chief Coroner's Office could not be faulted for the extended delay.

Motor Vehicle Branch

Medical tests for elderly drivers

An 80-year-old man returned from an extended winter vacation to find a letter from the Motor Vehicle Branch. The letter instructed him to make an appointment with his doctor for a medical examination, the results of which were to be submitted to the Branch.

As the deadline for the examination had already expired by the time he got the letter, he wondered whether his driver's licence was still valid. He also wanted to know how often he would be expected to have medical examinations in the future, so he could arrange his usual medical checkups to coincide with the checkups required by the Branch.

We explained to him the Motor Vehicle Branch procedures related to the medical testing of older drivers. The holder of a class 5 licence (the standard licence) is first required to take a medical on reaching the age of 75. The examination is again required at the age of 80, and every two years after that. The letter requesting such an examination is generally sent out by the Branch six months before the driver's birthday - that is, six months before the 75th birthday, the 80th, and every second birthday thereafter.

Although the letter requires the examination to be taken within 45 days, the Motor Vehicle Branch recognizes that many elderly drivers spend lengthy periods out of the province, as was the case with the caller. When such individuals return home to find that their medical is overdue, they may call their local Motor Vehicle Branch office and ask for an extension of time. At our suggestion, the caller did so, the extension was granted, and he passed the medical. He now knew that the next request for a medical would be received half a year before his 82nd birthday, so he could plan to make an appointment with his doctor at that time to combine his periodic checkup with that required by the Department.

Some elderly drivers tell us it seems discriminatory that they should be required to have regular medical tests when the same demand is not made of young drivers who, it is argued, are more likely to cause accidents through carelessness or recklessness. The Motor Vehicle Branch has developed a variety of measures to attempt to ensure the safety of the public on the roads, depending on foreseeable risks. It is a fact that the older a person becomes, the more likely it is that he or she may experience a medical condition that poses a risk to other drivers. Consequently it seems to us that the apparent discrimination created by the distinction between younger and older drivers is based on reasonable grounds and is in the public interest.

As for younger drivers who may be careless, the law is often an effective deterrent - and the subject of frequent complaint to our office. Drivers who fail to pay attention to the requirements of the *Motor Vehicle Act* may be quickly discouraged by stiff fines ($75 for a typical speeding ticket). If not, and penalty points continue to accumulate on the computer screens of the Motor Vehicle Branch, it doesn't take long for tickets to lead to probation, suspension and, ultimately, outright prohibition from driving.

Tired of waiting? Think of New York

The image people get of a Ministry at the "front lines" has a tremendous ripple effect. It's the small courtesies that count.

Several people called during 1990 to express their frustration over their inability to make telephone contact with a Motor Vehicle office in Vancouver. If the line was not busy, they said, the phone would ring and ring, then switch to a busy signal, and the line would be cut off.

We called the office in question. After 35 rings, a busy signal came on the line. Repeated calls over a period of days brought the same response. We called the regional director to discuss the matter. He explained that the offices were inundated with calls because it was spring and large numbers of teenagers were calling to make appointments for road tests to get their driver's licences in time for the summer holidays. Many of them were so anxious to get a test as quickly as possible that they would call several Motor Vehicle offices to see which one could offer the earliest date.

The director said he would contact the office and attempt to find an alternative to the busy signal. He described a variety of experiments that had been tried to increase the ability of Motor Vehicle Branch staff to field phone calls promptly. In one office, an employee had been hired solely for the purpose of answering calls. In another, each counter clerk had been provided with a phone to answer when there were gaps in the lineups; the problem with this alternative was that customers waiting in lineups tended to become irritated at the thought of someone being able to "jump the line" by phoning instead. At the time we called, the Branch was planning to install a central number for all road tests in Vancouver to reduce the demand for telephone service in individual offices. In addition, plans to install a central telephone information service for all Lower Mainland callers were under way.

A variety of alternatives had also been explored to reduce the frustration experienced by people waiting in line-ups to register vehicles, renew driver's licences, etc. The installation of machines to give out numbers had run into problems when people would grab a bunch of numbers and hand them out to friends who arrived later and jumped the line. In some offices a system was in place whereby a counter clerk would walk along the line up to weed out those people who simply needed a procedure that would take a matter of seconds, such as the stamping of a document.

Irritating as one-hour waits in line-ups may seem, they're nothing compared to the day-long waits some New York drivers face, according to a recent television documentary. It appears that serious efforts are being made in B.C. to reduce the delays.

No serial number, no plates

The complainant was driving in Oregon when his engine seized up. He dumped the car and bought an ancient Mercury from a dealer who sold vehicles that had been repossessed by banks. With the car he got a bill of sale, a title document, and plates that expired in four days. He then drove home to Vancouver through the Blaine border crossing, where a customs officer checked the serial number of the car and confirmed that it wasn't a stolen vehicle.

By the time the man got home, the licence plates on the car had expired, so he went to his local Motor Vehicle office to register the vehicle and get B.C. plates. Officials at the office checked his papers and told him the bill of sale was deficient, as it had printed on it the Oregon licence plate number but not the serial number of the vehicle. Consequently, they told him, they could not register the vehicle. He pointed out that as the title document contained both the plate number and the serial number, it could be readily determined that the bill of sale was for the Mercury. When his argument failed to convince the officials he called us.

We contacted officials at the Vehicle Registry Division in Victoria, who agreed that the documents contained sufficient information to permit the car to be registered. They suggested that the complainant go back to the Motor Vehicle office, ask to speak to the manager, and ask the manager to call Victoria if there was any doubt about his right to have the car registered. We related this information to the complainant, who said he would go down to the office directly. He called us later the same day to tell us that the car was now registered.

Serial number hide-and-seek

Rarely does the purchaser of a used car think to check that the serial number (Vehicle Identification Number, or VIN for short) on the vehicle matches the number on the registration papers. The Motor Vehicle Branch, on the other hand, never fails to check. Without a VIN to prove good ownership of a vehicle, the Branch can't register it and you can't drive it.

The buyer of a '66 Chev from Saskatchewan had such an experience. Afterwards, she called the seller to find out where the VIN was. He told her it had rusted off.

She wasn't out of luck - yet. Most vehicles have a "public VIN" on an inconspicuous part of the frame, as well as a number of "private VINs", which are made known only to police. Private VINs may be in any of a number of locations on the vehicle frame, depending on the model and year. As a rule, these can be quickly located by the Auto Theft Section of the RCMP (tel. 264 2166 in Vancouver). Unfortunately for the complainant, Auto Theft were unable to locate any serial number on the frame of her car. The serial number on the engine was no help, as vehicles are registered by chassis.

We suggested to the woman that she contact General Motors, the manufacturer, to inquire whether there were any private VINs on her car, and, if so, whether GM would forward a list of their locations to her local RCMP detachment for a final check. If that check proved unsuccessful, the chances were that she had a stolen - and unregistrable - vehicle.

Who did you say you were?

At first glance, the complaint sounded justified. On applying for his learner's licence, the complainant had produced his citizenship card to prove his identity. Later he passed his road test and applied for a permanent driver's licence. He was asked to produce ID again, but he couldn't do so because he had lost all his ID. The Motor Vehicle Branch refused to issue him a licence. Their stance made no sense, he told us. They had a photocopy of his citizenship card with his signature and photograph. Why should they refuse him a licence when he had already proven who he was?

The reason soon became apparent. The Branch requires proof of identity on both occasions for a legitimate reason: to prevent applicants from hiring a "ringer" to pass their driver's examinations. When this happens, a double danger is created. First, the driving public may be put at risk by a driver whose examinations have been passed by a stand-in. Second, because a driver's licence is generally accepted as authoritative proof of identification by businesses and government, there is a significant risk of fraud and a special duty on the part of the Branch to ensure to the best of its ability that the identity of all licensed drivers is well established.

In this case, the Branch had on its records the name of a driver with the same name and birthdate as the complainant. This individual had had a licence until 1987, when it expired and was not renewed because of significant outstanding court fines and penalty point premiums owed to ICBC. In addition, the individual had an extensive criminal record. His photograph looked remarkably like that of the complainant. Consequently a fraud investigation was under way.

The complainant assured us that he was not the other person. He said he had applied to Immigration Canada for a replacement citizenship card, but was running into problems proving who he was. We asked if he had had a driver's licence or school, employment or taxation records. No, he told us. For the better part of two decades he had been "kind of a hippie", travelling about in Alberta and California with no fixed address, no schooling, no jobs and no taxes.

As his "double" had a criminal record, we suggested that he could at least prove to the Motor Vehicle Branch that he was not the other driver by going to his local RCMP station and having his fingerprints checked. This he could not do, he told us, citing a Chinese proverb that says: "It is better for a man to die than to enter a police station."

As he said he couldn't remember his citizenship card number, we obtained it from the Branch and provided it to Immigration Canada. We explained to the complainant the reasons for the Motor Vehicle Branch's policy and advised him to follow the procedures set out by Immigration Canada to obtain a duplicate of his citizenship card to provide satisfactory proof of his identity. Our last contact with the Branch indicated that the fraud investigation was still under way.

Banned from Sidney

A Saltspring Island woman in her seventies took a driver's test that had an unexpected result. She passed the test, but the examiner was sufficiently concerned about her disoriented behaviour that he placed a restriction on her licence that limited her to driving on the island.

Area restrictions on driver's licences are designated under the authority provided by section 24(7)(c) of the *Motor Vehicle Act*, which states that the Superintendent of Motor Vehicles may "restrict the area in which the person or a class of persons may drive a motor vehicle". In practical terms, the clause enables the Branch to require drivers who demonstrate confusion to drive in areas that are clearly familiar to them, without creating the hardship of cancelling their licences.

The woman was not particularly concerned that an area restriction had been placed on her licence, but she was most distressed that it prevented her from driving to Sidney, where her doctors' offices and her favourite supermarket were located. We discussed her situation with Motor Vehicle Branch officials, who promptly remedied the problem by changing her area restriction to a 20-kilometre radius of Fulford Harbour. This enabled her to drive to Sidney but not to Victoria.

Pleased with the resolution, the woman wondered out loud, repeatedly, how she could thank us for our help. No need to, we assured her - it's our job. Insistent, she declared that if she ever won the 6/49 jackpot, she would not forget us. A month later she called back to say she still hadn't won the jackpot, but she remained optimistic and hadn't forgotten her promise. Regretfully, we will be unable to accept her most generous gift-to-be.

Capable in Quebec, but not B.C.

A young man was rendered a paraplegic as a result of an injury in his home province of Quebec. He subsequently obtained a Quebec driver's licence that restricted him to the operation of vehicles with approved hand controls.

Several years later, when the man moved to B.C., he called the Motor Vehicle Branch to ask what he needed to do to obtain a B.C. driver's licence. At the time, he did not mention his disability. He was informed that he need only present his valid Quebec licence, provide some other identification, and pass a road sign test.

A short time later he went to the Motor Vehicle Branch office in his area and fulfilled the requirements that had been described to him. He was then asked when he wished to take his road test. Surprised by this question, the man asked why he was required to pass a road test. He was told that it was because he had a visible physical disability. In addition, he later learned that he might have to complete a medical examination before he could receive his licence. He complained to us that the Motor Vehicle Branch policy appeared to be unreasonable and discriminatory.

When we contacted the Office of the Superintendent of Motor Vehicles, we expressed our concern that the Branch might not be making individual assessments of a driver's capability as a driver but, rather, applying a uniform policy of mandatory discrimination. The Branch explained that its policy was based on the premise that the Superintendent had a duty to ensure that licence applicants who were obviously disabled were capable of driving in a manner that would not endanger the public, and the Branch had no means of ensuring that the standards applied elsewhere were as stringent as B.C.'s or that visible disabilities were not degenerative.

A recent decision by the B.C. Council of Human Rights had found this policy to be unreasonably discriminatory, and we agreed. While recognizing that the Motor Vehicle Branch has a responsibility to ensure that drivers meet certain standards with respect to fitness and ability, we asked that the Branch review its policy of requiring a mandatory road test for disabled drivers who had already proven their driving capability to licensing officials in other jurisdictions with standards known to be similar to those of B.C.

Following our request and the Council of Human Rights decision, the Motor Vehicle Branch amended the applicable policy. It now provides that a medical report and a road test are not required for a physically disabled driver where the applicant holds a valid driver's licence from any Canadian province or territory or the United States, the disability has been assessed by that jurisdiction, and the applicant affirms that the disability is non-degenerative.

Probation and Family Court Services

Probation officer accused of bias

Complaints about bias on the part of probation officers are not unusual. When a youth is placed on probation it can be a very emotional time for the family. Often the family disagrees with the terms of probation and has difficulty dealing with the probation officer, whose responsibility it is to attempt to ensure that the terms are met.

A mother called to say that her son's probation officer was biased towards her and was actively assisting her ex-husband, who wanted custody of the son. We established that the probation officer had only contacted the youth's father at the youth's request, and had not discussed custody. The mother also believed that the probation officer was adding extra terms to the son's probation. The original order recommended that the youth attend a wilderness camp, but the decision was left to the probation officer's discretion. When the probation officer discussed this possibility with the youth, the mother became angry and accused the probation officer of extending the original terms.

Although we did not substantiate the complaints of bias, the local director agreed to a change of probation officer. It was apparent that the mother did not trust the probation officer, and building and maintaining trust is important when dealing with families. We felt that the local director had made a reasonable decision to change workers.

Ministry of Transportation and Highways

Resolved	48
Not resolved	-
Abandoned, withdrawn, investigation not authorized	13
Not substantiated	39
Declined, discontinued	17
Inquiries	10
Total number of cases closed	127
Number of cases open December 31, 1990	46

Practically every resident of the province receives a direct benefit from the Ministry's primary service - construction, improvement and maintenance of the province's highway system. The potential for public criticism and complaint is considerable.

Overall, the number of complaints against the Ministry has declined in recent years. Areas of complaint have included compensation for land acquisition, road access and safety, disruption resulting from construction, and perceptions of shortfall in the quality of service provided by highway maintenance contractors.

The Ministry is also the co-ordinating agency for subdivision approvals in unorganized areas. It ensures that the developer has obtained the necessary approvals from other authorities before permitting the subdivision to proceed. This leads to complaints against the Ministry which might properly be made against a different authority. Where a regional district is the approving authority, this office has no jurisdiction.

Saving the turtles

An orchard was separated from the highway by another property. Although the survey plan showed a panhandle access over the intervening property at the south end of the orchard, the orchardist considered this to be unsuitable access. It had never been used because, as a result of a now shaky agreement with the neighbour, an informal access had been arranged at a better area. The orchardist now wished to establish a new access at a more suitable location at the north end of the property. As the registered plan showed an existing access, the Ministry of Transportation and Highways refused the application.

Two facts concerned the orchardist. First, increased highway use made the access shown on the property plan unsafe. Second, the Ministry's position failed to take into account the question of the turtles.

During a highway improvement project some four years earlier, it had been brought to the attention of the Ministry that the piece of land through which the access passed was a breeding ground for the painted turtle, a threatened species. The Ministry had even spent money to protect and enhance the habitat area. The orchardist noted this fact, and pointed out that to suggest now that the access be developed would not be in the best interests of the turtles. The well-being of the turtles was a matter of such local concern that a citizens' committee for their protection had been organized.

After the orchardist contacted our office, we discussed the matter with the Ministry, which acknowledged that its correspondence regarding the sensitivity of the turtle habitat area had been misfiled; hence the refusal to consider the orchardist's pleas for a new access. In addition, current plans for a highway improvement project in the area confirmed that the panhandle access would become even more dangerous. With a proposed new intersection, access at the orchard's north end would be easily accomplished. It was the Ministry's wish to now offer the new access and get agreement to close the panhandle access at the south end of the orchardist's property.

The agreement was warmly welcomed by the orchardist, and our involvement might have ended at this juncture had it not been for the orchardist's plea for any assistance we might provide to ensure a happy future for the turtles. The primary problem, he explained, was the wanderlust experienced by turtles with eggs to lay, turtles returning from the nest to the pond, and turtles seeking new frontiers. Past experience had shown that many turtles who ventured onto the highway in heavy traffic had reached a dead end.

We called an eminent herpetologist, who confirmed that the painted turtle is an endangered species. We then dealt with the Nature Trust of B.C., a private organization with a mandate to obtain and manage land containing threatened species or ecosystems deserving of protection. The Nature Trust indicated that it was prepared to take over a suitable area of land, if the landowner agreed, and ensure permanent protection of the land as turtle habitat. On learning this, the orchardist agreed, without hesitation, to donate to the Nature Trust the southern part of his property where the turtles resided. We told this to the Nature Trust, which agreed to finalize the arrangement.

It was now up to the Ministry to close the access and erect the necessary fencing. On learning of the donation by the orchardist, the involvement by the Nature Trust and the wanderings of the turtles, the Ministry offered to do what it could to enhance the protection of the turtle pond while it was closing the access. Plans were made to deposit gravel to create safe nesting sites and to erect barriers along the highway to ensure that, in future, turtles and vehicles would keep to separate paths.

Once upon a time, a public road

A farmer lived on the same land that had been homesteaded by his father in 1912. Since that time, the family had enjoyed unimpeded access over what had been considered a public road. Now the Ministry of Transportation and Highways was claiming that the road was private and that the adjacent property owner was entitled to close the road. Tensions between the farmer and his neighbour were running so high that the police had been called to intervene in an altercation about the road after the neighbour had barricaded and locked it, even though no suitable alternative access existed. The farmer sought assistance from our office.

The complainant said that although his land was located inland from what was now the accepted public road, in the early days the road had "looped" through adjacent land, allowing access to the farm. Over the years the road was straightened, eliminating the loop and the easy access it provided. It was the complainant's firm belief that the loop, even if not currently a travelled road, was public because of its historical use.

Section 4 of the *Highway Act* provides that any travelled road on which public moneys have been spent (other than for snow-clearing) is a public highway. In its earlier review of the old records, the Ministry identified the road in the area by name only. Applying that name to what was now the road without the loop, the Ministry concluded that as the public had used the road, and as public funds had been spent to maintain it, that section was public. But those early records used only the road name, and nowhere was the "loop" specifically identified. In corresponding with the complainant's neighbour, the Ministry had inappropriately interpreted the researchers' silence on the question of the loop as proof that it lay on private property.

Our office studied the documents that had been available at the time of the Ministry's earlier review. Close examination of a National Topographical Series map drawn in 1934 showed the loop and also the section of road that cut the loop off. The most significant clue regarding use of the loop was the letter "P" at the crest of the loop, identifying the presence of a post office.

To obtain further evidence, we located and questioned, under oath, three elderly men who had been raised on ranches in the immediate area. One was the son of the former owner of the property on which the post office was located from about 1925 to

1950. He remembered his father being approached to establish the post office. He recalled that about 25 families used the post office, and all used the loop as the only road then existing and maintained at public expense. All three men described how property taxes had been paid off by work done on the roads during the 1930s, hauling gravel and using horsedrawn scrapers and Fresno bars. While horses and wagons were owned by the ranchers, equipment and supervision were supplied by the Highways Department of the day. One of the ranchers recalled such details as the placement of a wooden culvert and the concern over the scarcity of nails with which to hold it together.

This new evidence led the Ministry to conclude that the same road name had been applied to the two sections of road - first to the loop and later to its short and straight successor. The final conclusion was that the loop had indeed been used as a public road and that, at least since 1925 when the post office opened, public money had maintained the road. Accordingly the road was given public status and the complainant's access was re-established.

Privatization ends patrolman's job

Among the public servants whose positions were terminated as a result of the gradual privatization of a number of government programs in the 1980s was a man who had been a member of the British Columbia Highway Patrol for about 18 years. In October 1989 he complained to us about the manner in which his job had been eliminated during the privatization of highway maintenance services.

It had been the complainant's job to provide patrol services and enforce certain sections of the *Motor Vehicle Act* as specified by the authority set out in the Act and the Highway Patrolman Regulation. As part of the preparation for these duties, the complainant had, at one time, taken the oath of a peace officer, as his responsibilities corresponded in a limited fashion with those accorded to provincial or municipal police forces. Before they were privatized, patrol activities were limited to emergency service functions on major bridges and approaches.

The complainant argued that the government could not privatize the legal authority vested in a peace officer. In addition, he claimed that he had been improperly denied severance benefits after 18 years of service, and was dissatisfied with the representation provided to him by the B.C. Government Employees Union.

Upon investigation, we found that we could not substantiate the complaint. It was apparent that no peace officer functions were incorporated in the duties carried out pursuant to a contract awarded to a private party. In other words, the patrol function was simply eliminated. Nor did we agree with the complainant's position that the Ministry had a legal obligation to continue to provide patrol activities; rather, the legislation and regulation were permissive in nature, giving the Ministry the power to employ patrol persons if it so desired. The effect of the regulation was to grant the necessary legal authority to these individuals, if hired, to carry out certain functions. There was no duty at law cast upon the Ministry to maintain a highway patrol or any similar organization.

With respect to severance benefits, we could only review in general terms the provisions of the memorandum of understanding negotiated pursuant to a collective agreement between the employees' union and the Ministry of Transportation and Highways. Severance benefits had been agreed between the union and the Ministry not to be owing to individuals who had received and rejected job offers from both the private contractor and from government, as was the case with the complainant. While some individuals in similar circumstances might have received some severance benefits prior to the negotiation of the memorandum of understanding, we found that the complainant's rights relating to employment were entirely created and defined by the collective agreement and any memoranda of understanding negotiated pursuant to that agreement. It would have been inappropriate for our office to intervene in matters that were the subject of free negotiations between equal parties, each with access to expert counsel.

Return of land paves way for subdivision

A developer's plans for a subdivision on Vancouver Island were thrown into confusion by the four-laning of Highway No. 1. The highway project had already necessitated one major change to the subdivision, and the Ministry was insisting on a second change which the developer said would delay the project, result in the loss of one or two subdivided lots, and was unnecessary.

The problem stemmed from the route planned by the Ministry for the extension of an existing road which would provide access to the subdivision. The Ministry plan called for the road to go slightly to the north of the route planned by the developer to ensure that road construction would be up to standard.

The developer's engineer suggested that a shift of the centreline of only six feet to the south at a critical point would accommodate the current subdivision plan and save considerable time and land, which to the developer translated into costs and profit. As negotiations with the Ministry appeared to have reached an impasse, the developer turned to our office for assistance.

A review conducted with Ministry staff and engineers revealed that the road could be brought in line with the developer's plan if a small sliver of land that had recently been purchased by the Ministry from the developer were bought back by the developer. Such an arrangement would allow standards for road and ditching to be maintained.

When the Ministry agreed to this proposal, the developer agreed to absorb the costs of the buy-back and the redesign and administrative costs, all of which were modest. The subdivision project was then able to go ahead without a further change in plans.

Land transfer cures survey headache

Two owners of adjacent properties on southern Vancouver Island were embroiled in a dispute over a 20-foot strip of land which each claimed to own. The problem had been created by failure to conduct a survey when the properties were subdivided in 1928. The subdivision created two properties from a 10-acre parcel by deleting a half-acre lot from the southeast corner of the larger piece.

A later survey showed that the southern boundaries of both properties were located on the original land survey section line at the centre of the road at the south end of the properties. It was apparent that when the half-acre dimensions had been determined, measurements were taken from the fenceline of the road instead of from its centre line, thus creating the 20-foot discrepancy. The status of three strips of land, each 20 feet wide, was therefore put into question. Two of the strips were located on the travelled portion of the road at the southern end of the lots, while the third was the disputed strip on the north side of the smaller property, which protruded into the larger parcel.

The history of the road was studied by a researcher with the Ministry of Transportation and Highways. He determined that a 1911 plan dedicated a 20-foot width for the road, south of the section line which today runs down the centre of that road at this point. The 20 feet north of the section line was developed as a road. It was this strip that encroached onto the properties.

A resolution suggested by this office was adopted by the municipality and the landowners. The result was the transfer of title to the municipality of the two strips used as part of the road; cash compensation for this area was paid to the owner of the larger property, and the disputed 20-foot strip was transferred to the title of the smaller parcel.

Offer doubled after second look

When the Ministry of Transportation and Highways demanded the frontage of a 36-acre parcel of rural land for a new road, the owner objected. His first argument was that a road already existed, so the land wasn't needed. In the alternative, he contended, if the land was needed, the cash offer of $2,425 was far too low.

Our investigation disclosed that the existing road, on its meandering course, served as an access to lakeshore properties. To improve the road to Ministry safety and construction standards would require the removal of bends, filling of gullies, and removal of power poles. Acquisition of land from the resident, in addition to minor land acquisitions from neighbours, would make possible the construction of a new road that met all highway safety standards. For both economic and engineering reasons, the latter alternative was preferable, with the old road, with a lowered speed limit, being left in existence as the access route to the lakefront properties.

The cash offer was based on a professional land appraiser's report. After analyzing comparable sale values of similar properties and noting that the appraiser's report had been silent on the value of a groundwater source that would be obliterated by the new road, we agreed with the complainant that the cash offer was low. After noting our concerns, the Ministry raised its offer to $4,500 to reflect both a reasonable land value and the cost to the complainant of finding a new source of water. The Ministry's revised offer was considered fair by the complainant and was accepted.

Whaddaya mean, "stop"?

In preparation for a midwinter drive to the Interior, a Vancouver Island resident called the Ministry's new highway information line (1-800-663-4997) from his dial telephone.

The system responds to touch tone signals from a caller who can select a number which corresponds to any one of three areas within the province. It can also be activated by the voice command "stop" when the appropriate information sequence is reached.

In this case, however, the caller misunderstood the instruction words "say stop now" as an invitation to give up if not calling on a touch tone telephone. His suggestion was that a minor change in the wording of the instructions might avoid similar confusion to other dial telephone users. This was relayed to the Ministry, which agreed to review the instructions on the system.

Hold the salt

A southern Interior resident bought a rural property and began to build his home. He drilled a well, choosing for his site a location 400 feet from a sand and gravel pit that had been used for 25 years as a location for blending sodium chloride and calcium chloride with sand for use on icy roads.

After installing his pumping system, the man discovered to his horror that his water contained sodium chloride concentrations many times above the standard for drinking water established by National Health and Welfare Canada. Concerned that the source of contamination was the Ministry's pit, the owner sought our assistance.

After drilling test holes to determine if the salt source was natural or attributable to the operations at the pit, the Ministry agreed to drill a new well for the owner on another part of the 6.5 acre property. Two wells were drilled. The first was of insufficient yield to satisfy the owner's needs. The second contained high concentrations of calcium chloride, the other chemical used at the pit.

Since the property represented a significant source of sand and gravel, the Ministry offered to buy the land for a sum sufficient to compensate the owner for his investment, appreciation and expenses. The offer was accepted.

Island in turmoil over building covenant

A Gulf Islands resident complained that a restrictive covenant registered in the name of the Ministry of Transportation and Highways in 1975 impeded the development of his waterfront property. Like the other lots in the subdivision, the property was bisected by a highway running above the beach. Although there was adequate space to build a house on the lot between the highway and the ocean, the covenant disallowed all building on the ocean side of the road in the subdivision.

After purchasing the property with full knowledge of the covenant, the complainant made an application to remove the covenant. The Ministry asked for the opinions of the Ministries of Health and Environment about the need for the covenant. After a cursory examination of the situation, both Ministries responded that removal of the covenant would not be opposed, and the Ministry of Highways took a preliminary position that the covenant could be removed.

At this point the Islands Trust, one of the purposes of which is to preserve the atmosphere of the Gulf Islands, entered the debate with a strong objection to the removal of the covenant. Not surprisingly, the focus of the complaint to our office quickly shifted from Transportation and Highways to the Islands Trust.

As the Islands Trust is an authority listed in a section of the Schedule to the *Ombudsman Act* which has not yet been proclaimed by cabinet, our involvement might have come to a sudden end. However, in quick succession, the owners of three other lots in the subdivision complained to us that the Ministry of Transportation and Highways was in error in failing to oppose removal of the covenant. More parties entered the dispute when an ad hoc citizens' committee sprang up to support the complainant, while a former trustee of the Islands Trust came out against the original complainant.

Our investigation revealed correspondence dating back to 1979 which indicated that the covenant had been created because it was felt the properties between the highway and the ocean would not accommodate septic sewage disposal. The original owner and subdivider told us that, in his opinion, the shallow depth of the soil and the slope of the shoreline placed the area at risk. He also noted that a previous unsuccessful attempt had been made to remove the covenant.

In 1989, after extensive consultation with the Ministries of Health, Environment and Municipal Affairs, this office published Public Report No. 18, *The On-Site Septic System Permit Process*, which stressed the desirability of obtaining independent engineering studies (soil, hydrology, and geotechnical) on properties where sewage disposal might pose risks to the environment. The intent was that an applicant in such a case would supply whatever studies were required for evaluation.

After studying our investigative report, which described the original reason for the covenant and stressed the need for proper studies, in line with the findings of Public Report No. 18, the Ministry of Transportation and Highways concluded that the initial responses received from the local offices of the Ministries of Health and Environment had been based on superficial evidence. In light of this fact and the opposition from the other property owners, the Ministry drew back from its preliminary position that cancellation of the covenant was not objectionable. A condition was imposed requiring our first complainant to supply independent engineering opinions before any further evaluation was made. Furthermore, the Ministry advised the complainant that he must comply with the *Property Law Act* requirement for a Supreme Court hearing where the position of all interested parties must be considered before a restrictive covenant can be disturbed.

Culvert and swale provide the answer

A couple was concerned that a new development in their neighbourhood would result in drainage difficulties for established properties. Despite a variety of letters to and from the Ministry of Transportation and Highways, the couple was still not satisfied that their homes would be protected from runoff.

The Ministry of Transportation and Highways informed us that an existing culvert, together with the addition of a swale, would adequately deal with drainage for the area. The Ministry also assured the couple that it would assume full responsibility for the maintenance of the swale and, while it did not anticipate drainage difficulties, invited the couple to contact the Ministry should drainage problems arise.

Low bid short-lived

As it has done hundreds of times every year throughout the province, the Ministry of Transportation and Highways held a bid competition for highway maintenance in a certain area. One of the tenderers, on being told that his was the lowest bid, began the logistical efforts necessary to begin work. Shortly afterwards he was told that there had been a mistake: he was not in fact the lowest bidder, and the contract would be going to one of his competitors. The complainant was understandably upset and sought the assistance of this office.

Our investigation showed the Ministry's corrective action to have been appropriate and justified. In hindsight, the Ministry was able to see that the first announcement of the winning bid had been premature. The detailed tender forms included in the package sent to each bidder had sought bids for unit prices for each material used in the contract. The quantity of material required from contractors is set out by the Ministry, based on the findings of its own engineering studies. When the quantities are multiplied by the unit prices submitted by the bidder, a total is produced which is then added with all the other quantity totals to arrive at the total bid. The product of this multiplication of the desired quantity by the unit price is referred to as the "extension", and is subject to mathematical verification by the Ministry. It is important to note that it is the *unit* price which is binding on the bidder, as opposed to the extension amount. In this case, the bidder who was ultimately successful had made an error in the extension which was discovered by Ministry personnel when they performed a mathematical verification of all bids. Unfortunately, the complainant had already been advised that it was successful.

To make things worse, notes on the form submitted by the winning bidder revealed that certain original extensions had been correct but had been crossed out and replaced with an incorrect extension of a significantly higher amount. Why this was done remains a mystery to this office, as there was no conceivable advantage to the bidder, given that the unit price was binding and a routine audit would have revealed the discrepancy in any event.

In response to our investigation, the contract management office of the Ministry circulated an advisory memo to all of its regional contract administration officers advising of the dangers of informing bidders of success prior to completing mathematical verification of all bids. Although the complainant was understandably upset, this office could not criticize the Ministry's ultimate decision to award the contract to a firm other than the complainant. The Ministry's remedial action will, hopefully, prevent a recurrence of this type of incident.

Intersection lands on family farm

The owner of a rectangular 12-acre farm complained that a proposed highway intersection would cause havoc to his livelihood by dividing the property into four pieces. His house would be isolated on one part, the farm buildings on another, and the general accumulation of roads and accesses would completely disrupt his operation. Desperate, he sought our intervention.

A review of the engineering requirements revealed that the complainant's property was preferred for safety considerations and because it was the only way of avoiding disruption to a group of properties rather than just one. The land had been developed by the family over a 25-year period. The residence was owner-built, and the farm was intended to be an ongoing family holding. The family had close ties with its land and would find it most difficult and stressful to find a suitable replacement.

The Ministry's second option, more involved and potentially more costly, was to place the intersection at a site further north. This option was discussed with the family, and an agreement was reached. The intersection would be relocated, utilizing a strip of land on the farm's north and east boundaries for the public right-of-ways, and developing a new driveway for the farm parallel to the north and west boundaries. A further consideration was to allow the farm owner, himself an experienced logger and owner of a large Caterpillar tractor, to fell any trees on his land and to be engaged to work on the farm's driveway. This was considered an acceptable solution by all parties, and the project went ahead.

Babbling brook, raging torrent

The owners of two waterfront properties complained about severe erosion to their lands. The properties lay on both sides of an undeveloped highway right-of-way in a forested gully. Meandering seaward down the right-of-way, and at places touching the boundaries of the properties, was a year-round stream. Little more than a babbling brook for most of the year, it was dramatically transformed into a raging torrent during winter storms and spring runoff.

This right-of-way, acquired by the Ministry of Transportation and Highways many years ago with no plans for development, provided a legal waterfront access from the higher elevation, a public road some 200 meters inland. Over the years, the stream had torn up tree roots, trees had fallen into the channel, and the debris left behind blocked the stream bed. As a result, the stream had carved a tortuous, zig-zagging channel between the banks of the gully.

During heavy runoff, the stream would knife downwards to depths of 10 feet through the loose soil and would cut into the banks as a new channel was carved out. As the channel deepened, the banks would fall into it and be carried out to sea. By the time the complaints were lodged, the erosive action was carrying away large sections of the complainants' land - the result of many years of steady erosion.

After years of discussion between the complainants and the Ministry, an impasse had been reached over the question of the Ministry's responsibility to provide a remedy. The complainants held the view that the Ministry was responsible because the land was a right-of-way; the Ministry was not convinced it should be held responsible for acts of nature. Some years earlier the Ministry had, as a co-operative gesture, inserted plastic pipes into the bank to drain off subsurface water, but this well-intended work proved ineffective.

It quickly became apparent to us that several authorities held at least a partial jurisdiction: the federal Department of Fisheries and Oceans for the silting in the off-shore ocean bed; the Ministry of Crown Lands for the foreshore area over which the stream flowed; the Ministry of Environment due to this flowing stream; and the Ministry of Transportation and Highways as holder of the right-of-way.

The next requirement was to establish if any human activity had affected the course of the stream. Earlier review by many persons had been done. Upstream from the gully, the stream bed was armoured with natural rock, possibly existing since the ice age. In that area no erosion had occurred. At the road which paralleled the shoreline, a culvert diverted the watercourse from its original bed into the gullied right-of-way, its natural onward course being visible but dry, as that area's property had been built upon. It appeared that this diversion had occurred in the 1920s or 1930s during highway construction.

Early in the negotiations four factors were clear. The first was that the property owners were innocent losers. Next was that Highways holds responsibility for highway rights-of-way. Then, with the problems having existed for many years and with the erosion now at a serious stage, efforts towards a cure were decidedly preferable over prolonged study to find fault or other area of responsibility. Finally, returning the stream to its original watercourse was not possible due to the development of properties downstream.

A co-operative spirit took over. Highways first evaluated the economics of redeveloping the stream bed versus purchasing the properties and allowing the erosion to settle itself. Redeveloping the stream bed was chosen. With the Ministry undertaking to engage the engineers and supervise the construction, the actual construction costs were negotiated, as a professional assessment had determined that both the public right-of-way and the private properties would benefit from the works.

The property owners were willing to cost-share. As a basis for a cost split, the practice used by the Ministry of Environment where issues under the *Riverbank Protection Act* are involved was used. That practice provides for 75 percent public funding and 25 percent from the property owner. That was agreed upon. Then the 25 percent was reviewed, and with both property owners having comparable footage along the right-of-way, equal parts of 12.5 percent met agreement.

The contracted work produced a reconstructed stream bed alignment within the right-of-way. At the base is a geotextile filler cloth to prevent soil infiltration, upon which is a four- to five-foot depth of graded rock. The rock work extends to the base of the banks to reinforce the toe of the bank and act as a buttress against further sloughing. At engineered intervals, French drains (rock filled trenches) act as drains for surface and subsurface water from the one affected property draining directly into the stream bed. Energy-dissipating drop structures in the stream bed act to lessen high water velocity. Prospects for the effectiveness of the project are rated at a very high level.

This case is indicative of the value of replacing confusion and conflict with co-operation, the result in this case being satisfaction on the part of all parties involved.

Not an arm's-length contract

The complainant, along with other highway subcontractors in the interior of British Columbia, was upset with the Ministry of Transportation and Highways for apparently not requiring a major highway contractor to fulfil that aspect of its agreement with the province which required it to subcontract a certain amount of its maintenance work to other firms in the community. The problem was aggravated considerably by the fact that a significant amount of the subcontracting which had been done by the company had occurred without public involvement through a public tender process and had been given to its parent company. This would not be regarded as an arm's-length transaction.

Upon investigation, we were able to substantiate the complainants' concern. To its credit, the Ministry launched its own internal review, with the Ministry auditor confirming deficiencies in the overall amount of arm's-length subcontracting. The required amount of additional subcontracting to make up the deficiency was confirmed, and specific dollar amounts of contracting to unrelated firms were established for the remaining years of the contract. In addition, the Ministry put in place a review procedure by which the district manager could monitor the subcontracting process, including types of work subcontracted, identity of firms selected, amount of the subcontract, and the integrity of the public tender process used for the award of the subcontract. This office considered that the Ministry's actions fully addressed the deficiencies in the process, and thus we considered the matter resolved.

Other Authorities

Agricultural Land Commission

Resolved	1
Not resolved	0
Abandoned, withdrawn, investigation not authorized	4
Not substantiated	7
Declined, discontinued	3
Inquiries	1
Total number of cases closed	16

The Agricultural Land Commission administers the *Agricultural Land Commission Act*. The purpose of the Act is to preserve agricultural land so that the province does not become overly dependent on imported food to meet the needs of its citizens. The land designated as agricultural by the Commission is reserved for that use. Although the right of an owner to sell his or her land is not directly affected by the Act, a subsequent owner is bound by the provisions of the Agricultural Land Reserve. As the land cannot be used for non-agricultural purposes, the price obtained for it may not be as high as it would be if a shopping mall or other development could be built on it. Although this can be a very real frustration for some landowners, we do not receive a large number of complaints about the Agricultural Land Commission, and this may indicate that since 1972, when the legislation was first introduced, greater public acceptance and understanding of the purposes of the legislation has gradually evolved.

Many of the complaints we do receive come from elderly people who are no longer in good health and cannot continue to farm the land as they once did. They say that it is hard to find a buyer for agricultural land, and they complain that even if a buyer can be found, the price will be inadequate. Some feel that they are suffering economic hardship, and believe that the Agricultural Land Commission has acted unfairly in refusing to grant their applications to have the land excluded from the reserve. It is understandably difficult for them to accept that the Commission lacks the power to exclude land from the Reserve solely on the basis of the economic hardship suffered by the owners. If the Commission were to grant such applications in cases where the land is capable of supporting agriculture, the Commission would be unable to meet its statutory mandate to preserve agricultural land.

Thus, in reviewing such complaints, our role has been to provide complainants with a sense of the Commission's mandate so that they will better understand the reasons for the decision in question. Our experience has been that the Commission has adopted reasonable standards of procedural fairness and makes every effort to assist applicants in understanding the criteria involved in reviewing applications. We have found the Commission's management to be open and responsive in our investigation of complaints.

British Columbia Buildings Corporation

Resolved	2
Not resolved	-
Abandoned, withdrawn, investigation not authorized	2
Not substantiated	1
Declined, Discontinued	1
Inquiries	-
Total number of cases closed	6
Number of cases open December 31, 1990	1

Not just idle curiosity

A woman bid in a competition for a janitorial services contract for a Ministry office in the Kootenays. Her tender was rejected because it did not contain all of the information required on the bidding forms supplied to her company. She complained to us that the information sought by BCBC should be regarded as irrelevant to contractor selection or contract administration, and that the tendering process as managed by BCBC was unfair for this reason.

Upon investigation, which included a detailed review of the disputed documents, we concluded that, while preparation of the necessary information for BCBC's review would be somewhat onerous, the information sought was reasonably connected to BCBC's objective of ensuring the best value for money and consistent performance with a minimum of contract administration problems. The disputed information included the contractor's employee wage structure, the cleaning materials and equipment that the contractor intended to use on the job, and details of the corporate structure and any other business enterprise of which an applicant was a shareholder or director. The latter information was needed to determine whether persons who may have been disqualified due to non-performance of contracts in the past might be participating in the competitive bid process under a different name or corporate structure.

While the scope of information requested from the applicant appeared daunting, it all had a purpose related to contractor selection and contract administration. For that reason we did not consider the process unfair.

Competitor favoured, bidder calls foul

An electronic sound equipment company decided to enter a bid in a competition for provision of sound amplification services as part of a courtroom renovation in the Robson Square Courthouse complex. Company officials reviewed the specifications and were dismayed to find a requirement that all equipment be installed by one of the company's competitors, which held the maintenance contract for sound equipment in the courthouse. This restriction seemed to them unreasonable and a significant obstacle to fair competition.

Upon review, this office agreed. An interesting element of this case is that it had arisen once before, in 1987, with the same complainant in identical circumstances. The matter had been quickly resolved after being brought to the attention of BCBC. However, because the 1987 competition had been co-ordinated from a Victoria office, our recommendations aimed at ensuring fair tendering were not appended to the original tender documents. When administrative staff, operating out of Vancouver in this later instance, obtained the previous documentation as a precedent for the current competition, the restrictive element of the tender document slipped by unnoticed. Again, when this matter was brought to the attention of BCBC administration, the matter was instantly rectified. Closing date for the competition was extended, and the complainant submitted a bid. We considered the matter resolved.

Tender process too superficial?

A man approached our office at the end of 1989 with a two-fold complaint regarding BCBC's administration of janitorial and landscape contracts for a government building in the Gulf Islands. With respect to the janitorial contract, which his business had performed for BCBC for approximately seven years prior to a recent tender competition, the complainant argued that the low bidder won the competition with a bid that could be considered neither serious nor of an amount adequate to provide for cleaning services that would meet BCBC standards. The amount of the successful bid was roughly two-thirds of that tendered by the complainant.

With respect to the landscaping contract, the complainant said that the winning bidder should not have qualified for consideration, not holding the valid pesticide applicator's certificate (PAC) that BCBC required of landscape contractors.

Upon investigation, we learned that performance of the complainant's janitorial contract had for a time been substandard, although one tenant of the building in question attributed this to poor management of the contract by BCBC in the past. We observed that a major concern of the complainant in preparing his bid was an adequate return for his labour, and that other competitors might be willing to settle for less.

The competition for the landscaping contract caused us concern. A decision to award the contract to a bidder who lacked the necessary PAC was based on a representation that the bidder had completed the course of instruction for the certificate and that issuance of the PAC would be a mere formality. On this basis, BCBC considered the bidder to have the necessary expertise. As it turned out, the contractor in question failed the examination for the certificate and had to take the course again, with the result that the PAC was not issued until after the contract period had ended for the year. We pointed out the obvious embarrassment and damage to the credibility of the tendering process that can occur when assumptions are made about qualifications in the absence of documented proof.

Both contracts were renewed for 1990, with observations from BCBC and the building tenants that performance of these contracts ranged from adequate to excellent. Given the circumstances surrounding the administration of these contracts, we concluded the case by way of observations conveyed to the complainant and BCBC. No further remedial action was necessary.

B.C. Council of Human Rights

Resolved	4
Not resolved-	
Abandoned, withdrawn, investigation not authorized	.
Not substantiated	6
Declined, discontinued	2
Inquiries	2
Total number of cases closed	14
Number of cases open December 31, 1990	7

We receive few complaints against the Council of Human Rights, and those we do investigate often focus on the amount of time it takes the Council to reach a decision about a complaint. During the last year, the Council has taken measures to reduce delays in its complaint-handling processes.

Staff at the Council respond to our requests for information in a friendly and cooperative manner. Our investigators meet with them on a regular basis both to review complainants' files and to discuss any issues relevant to the Human Rights Council that may have arisen in our contact with the public.

Investigation on hold

A person who had filed a discrimination complaint with the Council complained to our office that the Council was taking too long to investigate his complaint and come to a decision, and that he was unhappy with the Industrial Relations Officer (IRO) selected to investigate the case. (IROs are employed by the Employment Standards Branch, and are sometimes assigned to investigate cases for the Council, which has no investigative staff of its own. IROs report the results of their investigation but make no recommendations.) The complainant wanted the file assigned to another officer.

We reviewed the person's complaint with staff at the Council. In our reply to him, we noted that the length of time it takes for investigations to be concluded may vary considerably, depending on factors such as the number of the parties to be contacted and interviewed, time involved in mailing correspondence and awaiting replies, etc. It was therefore difficult to predict how long each case would take to investigate. The same applies to Ombudsman investigations.

In the case at hand, it was evident that the primary cause of delay was a one-year stop placed on the file at the complainant's own request. Apparently he had informed the Council that he had thought he was going to be reinstated to his employment and that he did not want the Council's investigation to proceed. The Council informed us that the investigative process was nearing completion and that a summary of evidence would be sent to all parties shortly.

With respect to the request for re-assignment of the file, the Council explained its decision to refuse the request in a letter to the complainant. The letter pointed out, correctly, that the Industrial Relations Officer's duty was investigative in nature and that he did not have any decision-making authority in the complainant's case. The Industrial Relations Officer's role was simply to gather all the facts and present them and report to the Council.

Once all of the information had been obtained from all of the parties, a summary would be sent to everyone prior to any hearing by the Council. The purpose of this procedure was to ensure an opportunity for all parties to challenge the evidence if gaps in information were noted or if there was any question about the accuracy of the summary.

We advised the complainant that as his complaint was still under consideration by the Council, we would not investigate the matter further until the Council had reached a decision. He was invited to contact our office again if he thought whatever decision the Council reached to be unfair.

The right to a rebuttal

A man named in a complaint to the Council about sexual discrimination contended that, as a potentially adversely affected individual, he should have been notified of the allegation by the Council, even though the complainant and the employer of both individuals had already reached a settlement prior to any investigation by the Council. To make matters worse, he said, part of the settlement included an agreement to fire him.

The Council responded by saying that they generally hold the employer, not the discriminator, to be the responsible party. In this case, however, the matter was settled between the employer and the alleged victim before the Council became involved. While it was of no benefit to this complainant, since he had already lost his job, the Council agreed that in the future, where possible, any individual who might be adversely affected by a finding of the Council should be contacted during the course of an investigation and given the opportunity both to know the details of the complaint and to state his or her version of the events.

B.C. Ferry Corporation

Resolved	1
Not resolved	-
Abandoned, withdrawn, investigation not authorized	4
Not substantiated	5
Declined, discontinued	2
Inquiries	1
Total number of cases closed	13
Number of cases open December 31, 1990	5

The moment we all fear

When a pickup truck with an attached camper unit drove onto a ferry, the attendant motioned the driver to go into the lane straight ahead of him. The lanes on either side were packed with large trucks. As the camper went between them, the driver heard a loud crunch as the corner of his camper rammed the edge of a truck.

Our investigation revealed that the body of the camper was wider than the pickup by approximately five inches on each side. However, it was clear that there had been ample room for the camper to enter the lane, if properly centred. We concluded that the unfortunate miscalculation had been the driver's, not the attendant's. Therefore the Corporation's denial of compensation was considered to be reasonable.

Maybe we'll need it, maybe not

The owners of a 10-acre Gulf Island property complained that the potential for sale or development of their land was destroyed by the possibility of a ferry terminal's expansion.

The complainants had purchased the property in 1965. Within three months of the purchase, the terminal was developed and an access road was created by the expropriation of a part of the 10 acres. The topography, combined with traffic and pedestrian safety needs, required that the access be in a curve. As a result, the owners were left with two parcels - a 1.4 acre piece inside the concave of the right-of-way and a 4.4 acre piece on the convex of the curve. Zoning was rural-residential. Detracting from the residential possibilities of the 1.4 acre area lot was the fact that its predominant side faced the ferry access and parking areas. The attraction of the 4.4 acre area was blemished by the inability of the Corporation to guarantee that any future terminal expansion would not demand more land. Adding to the dilemma was Highways Ministry correspondence in 1982 stating that approval for commercial rezoning could not be given because of the potential need for land if terminal expansion took place.

Over the years the owner had attempted to negotiate with the Ministry of Highways, which formerly had responsibility for Gulf Islands ferries and their access requirements. A stalemate had resulted, and when responsibility passed to the B.C. Ferry Corporation, the Corporation took over negotiations with the complainants and conducted a review of future needs. Corporation policy allowed for the acquisition of land when need was proven and the price was reasonable.

The complainants had difficulty establishing fair market value even when a qualified appraiser was engaged. Contributing to the difficulty was the rural-residential zoning, as it was difficult to evaluate the property for either residential or commercial use, under the circumstances. Still at an impasse, the owners sought our help.

We concluded that the transaction and compensation negotiated a decade ago were not reviewable now from a compensation point of view. However, what was open for consideration was the adverse effect of those earlier negotiations on the remaining lands when weighed against present land acquisition policies. The Ferry Corporation accepted the suggestion that the issue receive a review at a senior level to seek a remedy to the owners' dilemma, and the matter was still under review at the time of this report.

B.C. Housing Management Commission

Resolved	16
Not resolved	-
Abandoned, withdrawn, investigation not authorized	4
Not substantiated	12
Declined, discontinued	1
Inquiries	5
Total number of cases closed	38
Number of cases open December 31, 1990	17

Our dealings with the Commission show its staff's willingness to respond to individual problems and to reconsider policy where necessary. There is one unresolved concern, not of the Commission's making and perhaps not within its power to solve, and that is the fact that some of the people who call us have no idea who their landlord is.

Usually these calls are from people living in co-operative or non-profit housing. Co-ops are required to maintain a percentage of their units for low-income families. Only half of those units are filled by tenants referred from the Commission's waiting list; the rest simply apply to the co-op. In all cases the co-op or society decides whether or not to accept the tenant, when and how to evict the tenant, and what the rent is. The Commission's only roles are to screen and refer applicants and to process the rent subsidy forms referred by the co-op or landlord. Despite this fact, many people feel that the Commission is their landlord and expect the Commission to be able to help when something goes wrong.

Driven out by flea spray

The mother of an infant asked for help in obtaining financial compensation for the period she had to vacate her subsidized housing unit while an exterminator dealt with a flea infestation. B.C. Housing Management Commission staff felt that the unit would have to be vacated for a period of ten hours, but Public Health had advised the woman that no contact with the sprayed area for ten days would be the best course of action.

The spray had been directed at the floors and baseboards, and since the baby was at the crawling stage, the mother did not see how she could prevent contact for so long a time. After discussion with our office, the Commission agreed to pay the motel cost for the entire ten-day period, as well as associated out-of-pocket costs, and to rebate the woman's rent for the same period.

Chronic lateness leads to eviction

A tenant believed she had been unfairly given an eviction notice by the B.C. Housing Management Commission after paying her rent late; her neighbour, who was also late in paying the rent, did not receive the same notice. It turned out that the rent payments of the caller, unlike those of her neighbour, had been late during 80 percent of her tenancy period. We concluded that the Commission had acted reasonably in giving her notice.

British Columbia Hydro and Power Authority

Resolved	25
Not resolved	-
Abandoned, withdrawn, investigation not authorized	9
Not substantiated	22
Declined, discontinued	65
Inquiries	4
Total number of cases closed	125
Number of cases open December 31, 1990	31

The Ombudsman's 1989 Annual Report noted that the number of complaints received in 1989 against this authority was substantially lower than in previous years. We attributed the reduction to the introduction of the Regional Reviewer position in each of B.C. Hydro's four divisions. This downwards trend in the number of complaints continued in 1990.

The majority of complaints received in 1990 involved either billings or credit and collections issues. Most of these complaints were referred to one of the Regional Reviewers for resolution. We continued our policy of advising our complainants that if they were unhappy with B.C. Hydro's response they should contact our office again so that we could investigate the matter independently.

The following are typical examples of credit and collection complaints we received in 1990:

- An income-assistance recipient received a disconnection notice for unpaid arrears. She had no money to pay the bill.
- A man told us he was having difficulty paying the arrears on his Hydro account because his UIC cheque had been sent late. After having had his service disconnected once, he had given Hydro a cheque that bounced. Hydro had responded by giving the complainant only one more day to make the payment before he would be disconnected a second time.
- A man complained that Hydro had transferred his step-daughter's arrears onto his account at her request. He said that he had stayed with her on several occasions at her Victoria residence but they had never lived together and were not living together now.
- A woman thought it unfair that B.C. Hydro disconnected her service two days after she failed to make a pre-arranged payment on her outstanding arrears from a former address. She was also unhappy with the $64 reconnection charge and said that Hydro had "too much power".
- A woman and her male friend had lived together with the Hydro account in the friend's name. When he moved out, the woman had the account changed to her name. She called our office to complain that Hydro was requiring her to pay the outstanding arrears from her friend's account.
- A woman complained that Hydro had threatened to disconnect her service, which was in her estranged husband's name. She found this action particularly objectionable in light of the fact that Hydro had refused to change the account to her name without legal separation papers, which the woman said she did not have.
- A man reported that he had been injured on the job and had been off work for a couple of months. As a result, he was in serious financial trouble through no fault of his own, yet he faced a service disconnection if he did not pay his overdue Hydro bill.

Few complainants call us back after taking their problem to a Regional Reviewer for resolution, and it is reasonable to conclude that most complainants' problems are satisfactorily resolved by the Regional Reviewer. Through ongoing discussions with the Regional Reviewers we try to confirm this understanding. However, if necessary, we will implement a more formal "report back system" to ensure that complaints we have referred to the Regional Reviewers have been resolved to the complainants' satisfaction.

With regard to complaints about issues other than payment collection practices, we have found that the policy instituted last year of referring such complaints to the appropriate area manager for investigation, follow-up and resolution continues to work out well.

The fact that very few Hydro complaints received by our office have to be referred to higher levels in the corporate structure of the Authority suggests that the referral process described above is highly satisfactory, and speaks well for the commitment shown by the Authority to resolving grievances brought to its attention.

Telltale clue points finger at Hydro

A man from the Okanagan who was staying temporarily in Vancouver was surprised to receive a telephone call from the Credit Bureau. He told us that only B.C. Hydro knew of his whereabouts and therefore B.C. Hydro was the only possible source of this information. He complained that the release of the information constituted a breach of confidentiality.

B.C. Hydro agreed with the customer. Apparently a Hydro collections clerk, when contacted by the Credit Bureau, mistakenly assumed that B.C. Hydro had referred an overdue Hydro account to the Credit Bureau, and readily provided the Credit Bureau with the customer's Vancouver phone number.

On learning what took place, the Hydro Office Supervisor immediately contacted the Credit Bureau and asked that the information be deleted. Satisfied that this had been done, the Office Supervisor directed the Credit Bureau to restrict future requests for information to accounts referred by B.C. Hydro.

The complainant was satisfied with Hydro's quick and active response to his concern.

Confidential information given to police

A man complained that B.C. Hydro personnel had provided to the police confidential account information relating to his power consumption. The information had been released without his permission or knowledge and without any suitable authority from him or anyone else to do so.

We notified the appropriate Hydro Manager of the complaint and requested that, since the person's concerns appeared valid, Hydro staff review the circumstances that resulted in the information being given to the police and report their findings to us. We also recommended that Hydro develop policy regarding the disclosure of customer information to outside sources so that further incidents of this nature did not happen.

Hydro agreed that the complainant's account information had been released to the police without the person's authorization and without a search warrant. A memo was sent to all Hydro District and Area Managers reminding the managers that customer account information is confidential and is not to be released to the police or other enforcement agencies without an appropriate search warrant or authorization from the customer.

Heated dispute over bill

A woman contacted our office after being informed by a collection agency of its intention to apply for a garnishee order on an outstanding Hydro debt. This was improper, she told us, as the debt was for electric heat at former premises where the owner was to pay that cost. She said that her lease had stipulated that she was responsible only for the lights, an allegation that the owner was disputing.

We concluded that the woman's complaint was against her former landlord rather than B.C. Hydro. There had been only one hydro meter for the suite, and the complainant's name was the only one appearing on the account. Although B.C. Hydro could have continued with its collection action, they instead gave the woman 30 days in which to show she was attempting to take action against her former landlord. If this was done, Hydro said, it would ask the collection agency to suspend the collection action indefinitely.

Previous tenants to blame

A man who moved into new premises was upset when Hydro refused to reconnect its service because of a debt outstanding in the name of the former tenant. The new tenant argued that it could easily be verified that the old tenant no longer lived there.

In fact, Hydro was not holding the man responsible for the debt but was simply refusing him service at that address. Under the "Terms and Conditions" section of the B.C. Hydro Electric Tariff, Hydro has the discretionary authority to deal only with the owner of a property that has a history of highly transient tenants.

The owner of the property agreed to put the Hydro service in his own name, but declined to pay the $64 fee required to have the service reconnected. We advised the complainant that Hydro had acted within its authority and that he should talk to the owner if he wanted to continue leasing the property.

No mistake about bad credit rating

A man left the country for a year under the mistaken impression that a friend would take over his Hydro account. On returning, he was not amused to learn that an outstanding Hydro debt, in his name, had been filed with the Credit Bureau.

Although the man paid the debt immediately on being informed of it, he continued to experience difficulty in acquiring credit. It was unfair, he told us, that B.C. Hydro refused to ask the Credit Bureau to remove the debt from their records.

B.C. Hydro's policy is that a debt is removed only if the original referral to the Credit Bureau was a mistake. In this case, it was not, as the complainant had neglected to close off his Hydro account when he left the country. We found Hydro's policy to be reasonable and advised the complainant that he had the option of placing on his Credit Bureau file an explanatory message that would be read to all creditors requesting credit information.

Industrial Relations Council

Resolved	-
Not resolved	-
Abandoned, withdrawn, investigation not authorized	3
Not substantiated	-
Declined, discontinued	6
Inquiries	2
Total number of cases closed	11
Number of cases open December 31, 1990	15

In 1990 the majority of our complaints against the Council centred around section 7(1) of the *Industrial Relations Act*. That section is entitled "Duty of Fair Representation" and says (in part) "A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit...." If a union member feels that he or she has not been represented fairly by his or her union, then that person can make a complaint to the Council under section 7(1). If the person is not satisfied with the process or the subsequent decision of the Council, then he or she can complain to our office.

Many of these complaints that we receive involve situations where a union member's employment has been terminated by the employer and the union has refused to take the person's grievance, about the termination, to arbitration. Thus the person has had no formal hearing on the decision to terminate him or her.

The Council considers the person's complaint against the union and applies the test in section 7(1) as set out above. The Council has made it clear that if a union does a reasonable investigation and comes to a reasoned decision to drop the grievance then it will have met that test. The standard of "arbitrariness" allows for honest mistakes or "simple" negligence by unions, and it will take more serious or "gross" negligence on the part of a union before the Council will intervene on that ground.

Issues that have arisen in these cases and are subject to our ongoing investigations include:

(a) Problems of advice to and representation of individuals in bringing section 7 complaints to the Council. A union member who has lost his or her job and does not have the union's support may need legal advice to understand the rights contained in section 7 and someone to assist and/or represent him or her in filing a section 7 complaint with the Council and in conducting the case at a hearing. Many of these individuals may not be able to afford a lawyer but could be opposed by a lawyer, either from the union or the employer or both, at a hearing. As a result, some of these individuals look to the Council for advice and assistance with their cases. The Council wants to remain neutral as between the parties to a dispute and thus is not able to assist a person with the presentation of his or her case. The Council and our office have to deal with individuals who feel very disadvantaged when they have to prepare and present their case against their Union on their own;

(b) Dismissals of section 7 and/or section 36 applications due to delays in making applications to the Council. Many union members may not know that they can file a complaint against their union with the Council under section 7. As a result, there may be a long delay between when a person feels that the union has failed to represent him or her fairly and when the person finally learns of section 7 and files a complaint. As well, individuals may be unaware that any appeal, under section 36 of the Act, of a decision on their section 7 complaint must be filed within 15 days of the decision. Thus they could miss this deadline without knowing about it. The Council has stated that the goals of speed and finality are very important in industrial relations matters and applications must be filed in a timely manner. The Council is concerned about the prejudice that can happen to other parties if one party delays in filing an application. As a result, applications can be dismissed summarily on the basis of unreasonable delay. Thus, issues about the length of delays, explanations for delays and possible prejudice to other parties can arise with the Council;

(c) Settlement of section 7 disputes. When a union member files a section 7 complaint against the union with the Council, an Industrial Relations Officer may be appointed to attempt to resolve the dispute. Industrial Relations Officers may exert both persuasion and pressure on the parties to reach a settlement. This is successful in many cases. It is important for Industrial Relations Officers, in this negotiation and settlement process, to take account of the fact that unrepresented individuals are not likely as knowledgeable or experienced in these matters as are the union and the employer. A complaint was made by an individual to the Council and our office about the use of undue pressure by an Industrial Relations Officer and the validity of the settlement that resulted; and

(d) Decisions about who will represent a person at an arbitration after his or her successful section 7 application to the Council. When a union has been ordered by the Council to proceed to arbitration on an employee's grievance, the union will be in the position of representing the employee at the arbitration when the Council has just decided that the union failed to represent that person fairly in the past. As well, the union may be responsible to the person for compensation, depending on the outcome of the arbitration. This raises considerations of conflict of interest and requires that the Council consider when employees should be entitled to be represented by someone other than their union.

Insurance Corporation of British Columbia

Resolved	150
Not resolved	-
Abandoned, withdrawn, investigation not authorized	19
Not substantiated	-
Declined, discontinued	367
Inquiries	15
Total number of cases closed	551
Number of cases open December 31, 1990	65

A modest decrease between 1989 and 1990 was noted in the volume of complaints received against the Insurance Corporation of British Columbia. However, ICBC's Public Inquiries Department received 7,674 complaints in 1990, up from 5,861 in 1989. Compared with the 1989 statistics, a lower percentage of complaints are recorded as "resolved" and a correspondingly higher proportion of complaints fall in the "declined, discontinued" category. These figures do not mean that there are fewer resolutions from the point of view of complainants. Rather, they reflect further developments in our referral arrangements which involve corporation personnel in handling increasingly more complaint investigations, with our office providing periodic consultation and monitoring of the results.

It is a goal of the Ombudsman's office to encourage the Corporation to continue improving its internal complaint-handling procedures to a level where our involvement can be limited to assisting those individuals who have exhausted all other reasonable avenues of redress. Our office receives a small percentage of the complaints handled directly by ICBC's Public Enquiries Department.

Over the past two years, significant progress has been made toward the achievement of this goal through the shifting of greater investigative responsibility to the Ombudsman Enquiries Unit of the ICBC's Public Enquiries Department.

Previous annual reports have included a description of the complaint-handling arrangements between our office and the corporation's Ombudsman Enquiries unit. The procedure involves the referral of a portion of all complaints we receive against ICBC directly to the Corporation's Ombudsman Enquiries department for review. Ombudsman Enquiries personnel assemble the information necessary to evaluate each complaint, facilitate a resolution where warranted, ensure that the complainant receives any required explanations and appeal information in person, by phone or in writing, and report the results to our office. Our office notifies each complainant in writing where a complaint is referred in this manner, and complainants are invited to call us back if their concerns are not adequately addressed.

In 1989 we reported that about 60 percent of the complaints we received were referred directly to Ombudsman Enquiries in this way. During 1990 the volume of such referrals increased to at least 80 percent of all complaints received. With the assistance of management and staff throughout the Corporation, the Ombudsman Enquiries unit continues to provide prompt and appropriate attention to the concerns of complainants referred by our office. As in the previous year, very few complainants found it necessary to call us back for further assistance.

It is notable that ICBC customers rarely complain to our office about the Rehabilitation Department or the Special Investigation Unit (responsible for protecting the Corporation against fraudulent claims), both of which involve potentially difficult or sensitive service relationships with the public. These are relatively small service departments with specialized, experienced staff operating mainly out of the head office. Considering the large volume of people served, we also receive very few complaints against the Customer Services - Accounts department or the Collections department. Since the most complicated and highest pressure interactions between the public and the Corporation focus on the settlement of claims, it is understandable that most of our complaint volume is generated from claim centres.

The potential for customer dissatisfaction

ICBC is perhaps one of the more complex authorities with which we deal in terms of the scope and importance of the services provided and the extent to which the terms and conditions of providing service are prescribed by statute and regulation.

Most customers probably do not fully understand all of the implications of what they have purchased when they complete their application for insurance, and many who complain are shocked to find that their assumptions and expectations do not correspond to statutory and regulatory provisions or corporate policies and procedures. From our observation, complainants are often not experienced in dealing with a bureaucracy, are uncertain about their rights and the powers of the Corporation, and may not know how to ask the right questions. Add to this the stress and social disorientation that some experience as a result of their accident, and the anger and mistrust that some may bring to their initial interview from their own or others' previous claim experiences, and it is easy to appreciate the challenges faced by adjusters and other "front line" personnel.

Complaint volume

While these factors may help explain the difficulties that front-line staff may have providing service to some customers, it would appear that the volume of complaints originating from customer contacts with claim centre personnel could be reduced significantly. Many individuals who complain to our office have not pursued their concerns beyond the adjuster level and seem to be unaware or uncertain about the remedies available at the claim centre level or through the more formal appeal and review procedures.

This is unfortunate, since it appears that few complaints arise following customer involvement with these various internal complaint, appeal and review vehicles, including claim centre management, the Public Enquiries Department and other head office personnel responsible for dealing with customer grievances.

Thus, the question is not just "why do people complain?", but "why do people find it necessary to take their complaints outside the system?"

Complaints against the Claims Division

For most complainants, it is not simply the fact that a decision was not made in their favour, but rather the way they were treated that triggers their call to our office. Indeed, many individuals complain even before final decisions are made.

The following list points to some of the factors which appear to precipitate "claims" complaints to the Ombudsman's office:

- frustrated telephone access to claim centre staff;
- perceived rudeness or insensitivity on the part of the adjuster or estimator;
- loss of trust in the impartiality and professional capacity of adjusters who guess at their "probable" decisions and then change them before completion of a thorough investigation of all relevant evidence;
- apparent refusal of adjusters to receive or consider evidence which the complainant regards as relevant (such as witness statements from passengers);
- denial of the opportunity to examine and comment on all the evidence considered in making a decision;
- receiving an unwelcome decision that

does not appear to flow from the accessible evidence;

- inability to obtain satisfactory explanations or reasons for decisions;
- unsuccessful attempts to find someone in the Corporation who will seriously address their concerns;

These and other observations are being included in a more comprehensive review of ICBC's operations described in the following section. Some of these problems are already being addressed in projects initiated by Corporation management, such as the electronic telephone messaging system now being tested in some Claim Centres.

Ombudsman/ICBC Administrative Fairness Audit

Any complaint-handling service, internal or external, can find itself resolving the same types of complaints month after month without actually dealing with the underlying causes.

In our 1989 Annual Report, we described a process employed by the Ombudsman's office and ICBC's Public Enquiries department to analyze the underlying causes of complaints received and to develop the most effective means of rectifying the problems identified. This resulted in a list of administrative fairness issues for discussion during the early part of 1990.

The list included such general topics as access to information, the adequacy of existing appeal and review mechanisms, the clarity of communication with the public, and a number of more specific items such as problems with the salvage release form. However, it became clear that many of the issues identified were so interconnected that specific resolutions could not be formulated in isolation. Several issues were also related to projects already under way in the Corporation, including recent corporate research initiatives in the areas of operations efficiency, contractual obligations and customer relations.

For those reasons, and because of the effective working relationship that has been established over the past several years between the Ombudsman's office and Corporation management, a joint review at this time promised to accelerate progress toward the shared goal of enhancing the quality and fairness of service while maintaining the corporation's commitment to efficiency and economy.

A systematic administrative fairness review of ICBC, conducted jointly by the Ombudsman and Corporation personnel, commenced in late 1990 and is continuing through early 1991.

Information sources

Information is being obtained from three main sources:

1. The analysis of the underlying causes of individual complaints and complaint patterns (largely completed);
2. Personal interviews with selected Corporation personnel and outside professionals, primarily in the health and legal fields; and
3. Questionnaire responses from selected direct service personnel chosen in consultation with management.

All proposals for change arising from the findings will be developed in close consultation with the appropriate Corporation management groups to ensure that due consideration is given to implementation feasibility, economy, impact on other corporate policies and procedures, staff training implications, etc.

Ombudsman Public Report

The Ombudsman's intention is to publish the results of this project in the form of a public report some time in 1991.

The overall thrust of the Ombudsman's review and report is to bring an outside perspective to complement the Corporation's ongoing efforts to enhance its provision of an administratively fair and economical service to the public. A major focus of the study is to support the work of direct service personnel in achieving these objectives by identifying any needed improvements to the "tools" available and any unnecessary obstacles which can be removed.

From a public perspective, the two main goals of the study are:

1. to reduce the volume of complaints by refining internal complaint handling and appeal procedures and eliminating the underlying causes of legitimate complaints; and
2. to provide a publicly available account of the measures that can and have been taken to resolve administrative fairness issues on an ongoing basis.

Elements of the report are also expected to be of value to other public agencies facing similar challenges.

The following complaint summaries illustrate the kind of "customer service" problems being addressed by a number of policy and procedure review projects within the corporation and by our joint administrative audit described above.

No notification, no hearing

A letter sent to the complainant by ICBC stated in its entirety:

> Both the authorities and the insured have provided us with your name as the individual involved in an altercation at the location noted above. We wish to advise you that we have paid a claim as a result of the damage you caused to the claimant's vehicle. It is the corporation's intention to recover that loss from you. Our final billings on this file are $275.50. You have 21 days from the date of this letter in which to make payment, or arrangements for payment with the writer. Should you fail to do so, the file will be handed to our Central Recovery Division. Should you wish to discuss the matter further please contact the writer.

The complainant responded to the Claims Representative immediately in writing, with copies to our office and six other individuals, including his lawyer, ICBC's "Legal Department" and a Minister of the Provincial Government. The following segments from his letter display his irate response:

> ... The "authorities", your "insured" and many other people may have provided you with my name but obviously you were not provided either all the facts or the truth. Nor was I advised about this matter or given an opportunity to make any representations by myself or through counsel. Since your decision to make a payment was made without consideration of my rights to fundamental justice, you shall bear the sole burden of any payment or costs. Should you seriously attempt to collect this illegal, if not fraudulent amount, I invite you to take legal action.... This shoddy and immature attempt at creating an improper debt and then attempting to collect through threats is disgusting in a Crown Corporation. Within 14 days I expect an apology and your decision to either make the payment yourself with NO cost to me of any kind, and then to forget about the matter, or to rescind your decision and proceed properly.

Three weeks later the Claims Representative responded:

> Subsequent to your letter of November 30, 1990, we looked further into the concerns you raised in that letter. Our understanding of the facts revealed that there was an altercation at the above location, and as a result damage was sustained to a B.C. insured vehicle. In order to pursue the interests of our insureds who sustained damage in these, or, similar situations we must investigate the loss and attempt recovery. We discussed the loss further with the Burnaby R.C.M.P. in order to gain a complete understanding of the offence and to look at those events from your perspective as well as the [other party's]. Now that our investigation has been completed, we will no longer be looking for recovery for this loss. The writer wishes to extend an invitation to discuss this matter by telephone in order to bring this matter to an amicable conclusion....

This case illustrates the justifiable outrage that can result from an official's failure to observe two of the more significant principles of administrative fairness: failure to notify a person who may be affected by a decision or action of an authority; and failure to give that person an opportunity to present evidence and to rebut the evidence of others before decisions or actions are made. It is clearly improper for a public authority approaching a person for the first time to use the threat of collection action as a means of testing that person's willingness to accept responsibility for a debt and as a substitute for completing an investigation. In fact, these fairness principles are designed to ensure the adequate completion of the investigative process. Whether or not the complainant could have been found responsible for the damage is not the issue.

While this complaint might be coded as "resolved" for statistical purposes, it is easy to see how the damage caused by such a procedural "oversight" would be difficult to repair. Corporation management is aware of the problem and has initiated a number of procedural review projects, some involving our office, aimed at preventing this kind of problem from recurring.

Car found but no one tells owner

When the victim of a car theft called her adjuster three weeks after the event for news on the recovery of her vehicle, she was informed that she would be billed $800 for towing, storage and rental vehicle charges. Apparently her vehicle was recovered the same day as the theft and the adjuster concluded from the police report that the complainant had been notified immediately. The adjuster did not believe the complainant's denial of knowledge and insisted that ICBC was not responsible for these charges. The complainant was advised that she should pursue recovery of this amount directly from the police if she felt they were responsible.

ICBC's Ombudsman Enquiries unit investigation revealed that the police officer had not notified the complainant of the car's recovery as indicated in the report and that the adjuster had not contacted the complainant, having assumed that she had already been informed. It was decided, therefore, that the costs billed to the complainant would be included in the theft claim payment and that the Corporation would not pursue recovery against the police department.

Two years later, cyclist threatens to sue

In 1987 the complainant collided with a cyclist. Since the initial claim centre investigation indicated that the cyclist was at fault, no claim payment was made for his injuries and damage to his bicycle. However, just prior to the expiration of the cyclist's two-year limitation period for commencing legal action on the matter, he advised the claim centre that unless he received compensation, he would retain a lawyer and exercise his remedies. The new adjuster assigned to re-open the case concluded that the complainant could be held at least 50 percent liable for the accident. An out-of-court settlement was subsequently negotiated with the cyclist which automatically affected the complainant's position on the Claim Rated Scale when he renewed his policy in 1990. (That is, he lost his discount.)

The Ombudsman Enquiries Unit investigation confirmed the appropriateness of the change in liability assessment but revealed that the complainant had not been notified that the file had been reopened and settled in favour of the cyclist. Considering this failure to notify the complainant properly, the Discount Review Committee accepted Ombudsman Enquiries' recommendation that the claim should have no effect on the complainant's position on the Claim Rated Scale.

B.C. Lottery Corporation

Lucky numbers - wrong month

In mid-1990, we were approached by a disappointed and suspicious lottery ticket holder. The numbers on her March lottery ticket were drawn in the April draw. The coincidence seemed suspicious to her, so she started asking questions.

The woman began by asking B.C. Lottery Corporation to tell her who supervised the lottery draw. In due course she received a letter from the president of the Corporation informing her that a large, international accounting firm supervised the draws. Not content to rely upon this information, the complainant wrote a letter to the Vancouver branch of this accounting firm. She received a letter stating that this firm did not, and never had, supervised the draws.

This response added to the woman's suspicions. She came to us requesting an investigation of irregularities.

Inquiries by our office confirmed that this accounting firm indeed did conduct the supervision over the draws but that the draws were conducted in Montreal. As a result, the Vancouver branch of the firm was not aware of the supervisory role of the Montreal branch. Although the complainant was provided with this explanation as well as a videotape from B.C. Lottery Corporation of the winning draw showing this supervision, she remained convinced that there was something wrong. This office was satisfied that the process had been proper.

B.C. Marketing Boards

Bonus price on eggs

A man with an interest in marketing issues complained about the response he had received from both federal and provincial authorities to his allegation that egg producers were receiving a bonus price beyond the regulated price.

He told us that the federal regulatory authorities had advised him that enforcement of the Canadian Egg Marketing Agreement was a provincial responsibility. The B.C. Marketing Board, which is the supervisory body for all marketing boards and commissions in the province, had told him that the federal/provincial agreement was not being complied with, but had taken no further action as a result of the complaint. The B.C. Egg Marketing Board had taken no action to investigate the allegation beyond monitoring weekly reports from the processing stations.

It became apparent that there was a deficiency in the *B.C. Natural Products Marketing Act* since the B.C. Marketing Board could not initiate an investigation on its own or order a marketing board to enforce the provisions of its scheme. To remedy this failing, on February 15, 1990, an order-in-council was passed to allow the B.C. Marketing Board to investigate matters within its supervisory authority.

As a new mechanism had been provided, we advised the complainant to re-open his discussions with the B.C. Marketing Board on this issue. We told him that if he was dissatisfied with the response of the B.C. Marketing Board, we could investigate the matter further. Following the broadening of its authority as a result of the order-in-council, the B.C. Marketing Board initiated an investigation into the bonus pricing issue. The investigation revealed that bonuses had been paid to some producers in excess of the regulated price. The man who had initially complained to our office was satisfied with the B.C. Marketing Board's response to his concerns. The B.C. Egg Marketing Board is currently pursuing the question of the legal status of the regulation regarding the maximum price payable to producers through a court action.

A contentious milk quota transfer

A dairy farmer complained that he had leased a property and had an agreement with his landlady that any excess milk quota earned during the lease period would be his. He feared that the landlady was reneging on this arrangement and that the Milk Board would transfer all the quota to the landlady's son. Although quota may be purchased or sold, only the Marketing Board is authorized to prescribe the terms and conditions under which quota may be issued, held, transferred or cancelled. The man also complained that he had had difficulty communicating with the Milk Board directly and that there was urgency because the transfer date was imminent.

We contacted the Chairman of the Milk Board, who reviewed the matter and later advised us that the landlady had been notified that the amount of quota in dispute would not be transferred until the matter of its status had been decided. The Chairman also said that the Milk Board would be prepared to hold a further hearing if the complainant requested one and that the farmer would then have a right of appeal to the B.C. Marketing Board following any further decision. The complainant was satisfied that the removal of the disputed portion of quota from the transfer provided time for an adequate review of the issues.

B.C. Racing Commission

Horse trainer disputes lost licence

A horse trainer had his licence removed by the B.C. Racing Commission, pursuant to provisions of the *Horse Racing Act*, following a conviction for assault. The licence was eventually renewed, but because of concern for the trainer's history of bad behaviour and the effects of medication he was receiving, the Commission included terms which limited his appearance at the racetrack backstretch to business only and prohibited his being mounted on a horse while there.

The trainer complained that the terms prevented him from making a livelihood because they made it difficult to obtain owner-clients willing to put their horses in his care. At our suggestion, the Commission reviewed the terms of the licence. A doctor's statement that the medication did not affect the ability of the trainer to handle horses was again considered, but the Commission remained concerned about liability and insurance coverage at the track. The Commission decided to review the terms once more when the licence was due for renewal in nine months. An agreement was reached that acceptable performance by the trainer during that period would result in the lifting of all restrictions.

B.C. Securities Commission

Lawsuit results from failed appeal

The director of a mining company complained to us that the firm had been subjected to harassment and other unfair treatment by the B.C. Securities Commission and the Vancouver Stock Exchange. We explained that our investigative jurisdiction would be limited to the Securities Commission, as a component of the provincial Ministry of Finance and Corporate Relations. The Vancouver Stock Exchange, being composed primarily of private members, is not an "authority" under the investigative jurisdiction of this office as defined by the schedule to the *Ombudsman Act*.

The matter of jurisdiction having been clarified, we declined to investigate the complainant's allegations, as the complainant had what is referred to in the *Ombudsman Act* as an "available remedy": a hearing had been set down before the Securities Commission to take place approximately six weeks after the complainant's first discussions with our office. As this remedy would afford the complainant a full opportunity to air his objections and present evidence, the file was closed with the proviso that the complainant was at liberty to approach us after the hearing if he had a substantive complaint about the process of the hearing or about an issue which should have been considered at the hearing but was not.

The complainant contacted us a few months later expressing numerous concerns about the conduct of the Securities Commission. Initial inquiries showed that he had, immediately prior to the scheduled hearing, settled with the Securities Commission by way of an agreed statement of facts and consented to orders made by the Superintendent of Brokers. We found that the agreed statement of facts, signed by both the complainant and the Superintendent of Brokers, addressed the issues with which the complainant remained concerned.

We noted also that the complainant had filed against the Securities Commission and numerous other parties a lawsuit that had been summarily dismissed by the B.C. Supreme Court on the basis that it had disclosed no cause of action recognized in law. We therefore concluded that further investigation by our office would be of no benefit to the complainant, and that, as a result of the agreed statement of facts, the complainant's contentions could be considered without investigation. On that basis the complainant's concerns were found to be unsubstantiated.

B.C. Steamship Company

Resolved	-
Not resolved	-
Abandoned, withdrawn, investigation not authorized	-
Not substantiated	-
Declined, discontinued	-
Inquiries	1
Total number of cases closed	1
Number of cases open December 31, 1990	0

Sale of Princess Marguerite

In September 1990, a number of private individuals, including elected representatives of both local and provincial governments, came to this office with concerns related to the potential sale of what was described as an historic vessel, the steamship Princess Marguerite. Considerable controversy had arisen when it was learned that this vessel had been acquired from the province as part of a sale of assets by B.C. Steamship Company to B.C. Stena Line Ltd. in November 1988. When it was learned that B.C. Stena Line Ltd., which had apparently acquired the Princess Marguerite for one dollar, was attempting to sell the vessel on the international market, concerns were raised as to whether the province had effectively lost, without compensation, a significant asset.

The Office of the Auditor General was also contacted with similar concerns, and it became apparent to us that certain financial valuation matters should be left to that office. Nonetheless, we were able to review the extensive documentation which formed the legal basis for the transfer of assets; the various agreements negotiated in 1988 were subsequently administered by the Ministry of Tourism, and it was this Ministry which represented the province in executing the final closing documents in November 1990.

The review by this office of the sales documentation and the chronology of events surrounding the sale of assets revealed that the sale of assets and the creation of securities necessary to protect the interest of the province had been carried out "by the book". There was no element of the transaction amounting to bad faith. The fact was that, for better or worse, the province chose to sell in 1988 a package of assets, including two motor vessels, dock facilities and related assets necessary to carry on the business of marine transport, for a package price of $6 million. The purchaser was free to allocate the purchase price among these various assets as it saw fit, subject only to whatever requirements might be imposed by agencies such as Revenue Canada.

At the time that concerns about the Princess Marguerite were brought to this office, the third and final instalment payment under the original acquisition agreement of 1988 was pending; this $2 million payment, which completed the $6 million transaction, was paid by B.C. Stena as required and on time, in November 1990. With this payment, B.C. Stena Line became absolute owner of the Princess Marguerite, subject only to the right of the province to exercise an option to purchase the Princess Marguerite, which was tied to an agreement requiring the province in its exercise of the option to match any competing offers. A decision was made by the province not to purchase the Princess Marguerite with public funds; rather, the province chose to act as broker, exercising its option to purchase on behalf of a qualified purchaser if a proposal satisfactory to the province was received during the time in which the option to purchase remained open. The province established specific criteria in its call for proposals, and the process was administered by the Purchasing Commission in the Ministry of Government Management Services. Again, there was nothing in this process of which this office could be critical. Much to the disappointment of certain individuals with an interest in historic ships, no satisfactory proposals were received, and the option to purchase expired.

Superannuation Commission

Resolved	10
Not resolved	-
Abandoned, withdrawn, investigation not authorized	1
Not substantiated	15
Declined, discontinued	5
Inquiries	5
Total number of cases closed	36
Number of cases open December 31, 1990	4

To understand the magnitude of the operations of the Superannuation Commission, one has to consider that the Commission serves approximately 50,000 pensioners and 160,000 contributors who are covered by eight different and complex pension plans and statutes. The Commission issues about 15,000 refund cheques per year and administers assets worth approximately 11 billion dollars. In the context of this information, the number of complaints we receive is small.

Nevertheless, late in 1989, we noticed that, over a period of ten months, we had received 56 complaints about the Commission. As this was a significant increase over those received in past years, we decided to have a closer look at the situation. It turned out that 23 of the complaints concerned delays, including delays in payments of refunds and of retirement and widows' pensions. Two of those cases are described below.

We noted that in 1981 we had received 19 complaints about the Commission. At the time, the Commission operated with a staff of 111. In 1989, the Commission staff had decreased to only 105, and it was obvious that the decrease in staff had resulted in a reduction of services. At the same time, the Commission was faced with rising expectations of clients used to improved customer service by other financial institutions such as banks and trust companies.

As a result of our findings, we wrote to the Commission and made certain recommendations. The Superannuation Commissioner expressed his appreciation and indicated that our suggestions would serve as a useful tool in improving the Commission's services. Apparently as a result, the number of complaints we received during 1990 was small.

The lost pension blues

In 1983 an employee of the Pacific National Exhibition lost his position, after approximately 20 years of service, as a result of reorganization. At the same time, his contributions to a pension plan under the *Pension (Municipal) Act* stopped.

In March 1983 the man wrote to the Superannuation Commission requesting a statement of his pension contributions and information regarding their cash value so that he might consider "withdrawal versus letting the plan sit until I am 65 years old." The Commission informed him of the amount to his credit at the end of 1981, as more recent information was not yet available. It suggested that the man request a calculation of a pension at age 60 and age 65 and informed him that there is no penalty or loss of benefit on retirement at age 60. The man once more wrote to the Commission, requesting such a calculation, and the calculation was provided to him after some delay. The Pension Calculation Division, in a covering letter, referred to various options "should you retire effective January 1, 1986".

In May 1988 the man again wrote to the Commission. He stated that he was employed full-time elsewhere and asked whether he could draw his PNE pension without penalties or future complications. In August 1988 the Pension Calculation Division mailed him forms he had to complete for his retirement. At this point he noticed that there must have been a misunderstanding all along. His mental picture of a retired person was one of an individual who no longer worked for remuneration, but rather pursued the activities normally connected with retirement. His understanding of the term “retirement” was not tied to its meaning in the context of superannuation legislation, which he had never seen. The information he had received from the Commission therefore meant to him that, should he terminate work altogether at age 60 or 65, he would be entitled to certain pension benefits. He had no idea that he would have been eligible for a reduced pension at age 55 and a full pension at 60, regardless of whether or not he worked elsewhere.

He finally wrote to the Pension Calculation Division, applying for his pension “back to the earliest date possible from age 60". Based on his date of application, his pension became effective on Ma[illegible] 1988. In other words, because he misunderstood the meaning of the term "retirement" in this particular context, he lost his pension entitlement from January 1, 1986, the first month after which he reached age 60, to April 30, 1988. The man then sought our assistance in resolving the confusion and, in his mind, the injustice that resulted from it.

On examining the applicable legislation, we found that the Commissioner had some discretion in determining the effective date of the complainant’s pension benefits. We suggested to him that he exercise this discretion and make the complainant’s pension effective at an earlier date. The Commissioner complied, and as a result the complainant received a retroactive payment of approximately $25,000.

Too late by a day to avoid tax penalty

A woman officially retired from her teaching position at the end of March 1989, but she had actually left her job in June 1987 on leave without pay. She applied for her pension in February 1989 and was led to believe that her first cheque would be deposited in her account by May. She told us that, when the cheque had not arrived as expected, she phoned the Commission to inquire about its whereabouts. She was told not to expect her money for another two to four weeks because the Commission was overworked and understaffed.

Meanwhile, she had received her property taxation notice and feared she might be unable to meet the deadline for payment and thus incur a penalty. Facing this quandary, she sought assistance from her MLA (who happened also to be the Minister of Finance), explaining her situation and pointing out that, not having received her pension, she did not have the money to pay her taxes. She heard back from an individual in the Ministry of Finance who had made inquiries with the Commission and had been assured that the pension cheques for three months would be deposited in the complainant’s account by June 30, 1989. The Minister’s letter to her of July 13, 1989, confirmed that “upon investigation by our Customer Service unit, we have been advised by the Superannuation Commission ... that your April, May and June payments will be deposited in your account by June 30, 1989.”

The money was deposited in her account not on June 30 but on July 5 - one day after the deadline for property tax payment. She then mailed a cheque to the Property Taxation Branch, deducting the amount of interest she thought she had lost as a result of late pension payments. The Ministry of Finance next sent her a statement indicating a late payment penalty of $82.46, in addition to the $40.86 she had deducted, for a total of $123.32. This was the point at which she sought our assistance.

The complainant had retired in March and had to wait for three months to receive her first pension cheque. This constituted, in our view, an unreasonable delay, particularly when the complainant had been without an income, on leave without pay, for several months. We felt that, ideally, her first pension cheque should have been in her hands on April 1, 1989. A delay of two to three weeks might have been acceptable, but it is not reasonable to expect a retired employee to wait for over three months for the income to which she is entitled and which she requires for her livelihood.

We also considered that the complainant had taken adequate steps to ensure that her pension money would be in her hands in time for her to pay her property taxes. She had assurance from someone in the Ministry of Finance that the money would be in her account in time for her to pay her property taxes. She was entitled to rely on that information.

We suggested to the Commission that the complainant be compensated for the interest lost on the pension payments. Furthermore, we suggested that the Superannuation Commissioner reimburse her in the amount of $82.46, representing the tax penalty she incurred because she was unable to pay for taxes when due.

The Superannuation Commissioner responded that he had no statutory authority to authorize an interest payment; however, he was prepared to reimburse the complainant for the tax penalty of $82.46. This seemed to us a reasonable compromise.

Windfall turns to dust

In 1986 an individual retired from his position with B.C. Hydro and elected a certain pension plan option. Early in 1990 he received a letter from the Superannuation Commission informing him that, due to an error, an overpayment had been made. Under the terms of the benefit option he had selected, he was not entitled to a cost-of-living increase until the month of his 60th birthday. He had received such an increase much earlier than he should have, resulting in an overpayment of $2,299.16.

The Commission proposed to deduct this overpayment from the man's monthly pension benefits. He felt it unfair that he should have to suffer the consequences of a mistake made by others, and sought our assistance.

During our investigation, we discovered that a letter sent to the complainant by B.C. Hydro in June 1986 advised him that if he selected this particular pension option, "cost-of-living supplements are not payable from the Plan until the months in which the 60th birthday occurs but at that time the accumulated percentage since retirement will apply." There was no doubt that the complainant had indeed received this letter. He knew or ought to have known the rules, and when his pension cheque was suddenly much higher than it should have been, he should have known that an error had occurred. Rather than drawing the error to someone's attention, he kept silent. When the Commission itself discovered the error after some time, he felt wronged.

We decided that the Superannuation Commission was acting correctly in recovering the overpayment from the complainant. Had the complainant not been provided with all relevant information before he selected his benefit option, we might have arrived at a different opinion.

B.C. Transit Authority

Resolved	2
Not resolved	-
Abandoned, withdrawn, investigation not authorized	5
Not substantiated	1
Declined, discontinued	6
Inquiries	1
Total number of cases closed	15
Number of cases open December 31, 1990	4

So long, farewell, pay up

A man who had driven buses for B.C. Transit for a number of years decided to retire and join his wife in a move from Vancouver to the Interior. In early September of 1990 he submitted a letter of resignation to take effect December 31, 1990. After receiving his letter, his supervisors called him to a meeting; they informed him that as they were not understaffed they were prepared to allow him to leave immediately if he would find that more suitable.

The driver accepted the offer and moved to the Interior. Shortly thereafter he was informed by B.C. Transit that he had to reimburse them for approximately $500, as by leaving early he was indebted to them for the vacation time he had already used. He came to our office with the complaint that he had not been informed of this debt at the time of accepting the invitation to leave. Had he known of it, he said, he would have worked until the end of the year, as originally suggested in his letter of resignation.

This case raised the interesting question of where the responsibility lies for ascertaining where one stands financially with one's employer. Prior to this office making a decision with respect to this question, B.C. Transit decided that as there was some measure of responsibility on its supervisors, they would on this occasion cancel the outstanding debt and ensure that a bulletin was sent to supervisory staff alerting them of the need to mention the matter of vacation pay should similar circumstances arise in future dealings with employees.

Bus accident hard on pocketbook

An elderly woman was injured in a Victoria Transit Centre bus when the bus suddenly pulled away before she was seated. She was taken away by ambulance, required follow-up physiotherapy, and needed medication for the pain. The woman contacted us because she had a limited income and wanted to be reimbursed for the cost of the ambulance, taxi rides to physiotherapy, and painkillers.

We contacted the head of accident investigation at the Victoria Transit Centre and found that the bus operator had made his report and that this information had been forwarded to the Insurance Corporation of British Columbia. We then called the Dispute Resolution Centre in Victoria and found that they were helping the woman complete her forms for ICBC. We informed the woman of all this, told her to call us again if ICBC did not handle her claim satisfactorily, and closed the file.

Workers' Compensation Board

Resolved	216
Not resolved	3
Abandoned, withdrawn, investigation not authorized**	286
Not substantiated	6
Declined, discontinued	175
Inquiries	86
Total number of cases closed	772
Number of cases open December 31, 1990	95

The statistics include figures for the Criminal Injury Section, administered by the Workers' Compensation Board.

** Includes appeal to tribunal, a category included under "declined/discontinued" in previous annual reports of this office.

During 1990, our relationship with the Workers' Compensation Board was at times frustrating and at times satisfying. Our office does not have infinite resources to deal with complaints concerning the Workers' Compensation Board. That is why we devised a system to streamline the investigation of complaints and to refer certain types of complaints to the Board for analysis and resolution, while we continued a monitoring role.

It was one of the major objectives of our Public Report No. 7 to identify changes in the system that would have the effect of increasing the quality and reputation of Workers' Compensation decisions, which in turn would significantly reduce the need for Ombudsman review. As a result of changes in our procedures and Board management cooperation, we have been successful in reducing the extent of our involvement in cases where the Board resolves the problem or where we decline to investigate on the basis that the worker had an adequate remedy or that there were insufficient grounds on which to pursue an investigation.

However, the extent of the resources and energy required to engage in ongoing written correspondence with the Commissioners is significant. Frequently the Commissioners take a great deal of time to respond and often, in doing so, fail to answer all our questions. This, of course, necessitates yet another round of written correspondence. This formal procedure is frustrating and time-consuming and takes considerably more financial resources than would be the case with a less formal approach.

In contrast, we have achieved a satisfying and co-operative relationship with the Board's middle management, which we believe has resulted from direct communication between our staff and Board staff. Our staffs meet regularly to discuss issues and ensure we understand each other's position.

The need for improved and ongoing communications with its clients is a matter of concern to the Board and to our office. The common theme in these complaints is that clients appear to lack an adequate understanding of the decision-making process and experience frustration in obtaining access to the decision-makers. Often, the client does not have a full understanding of the status of his or her claim or the full reasons for a decision or delay. This has been the one major trend identified in the Board's analysis of complaints referred to it by our office.

Making decisions on complex questions of coverage is difficult. There is a tendency to avoid hard choices and to deflect controversy by cloaking information in generalities or by limiting the disclosure of all relevant factors considered. However, fairness requires that specific and complete explanations of Board decisions and the process by which they were made are given. It is not only fairness but common sense that suggests this approach. When a claimant knows exactly the reasons for the decision, he or she is able to evaluate the decision to decide whether the reasoning is acceptable and all the facts were considered. Supply-ing further information may then change the decision in the claimant's favour. When the reasons for the decision are unclear or unconvincing, it is not surprising that an appeal is initiated. Incomplete and inadequate explanations of decisions at the initial level have the potential for later clogging the system with unnecessary appeals and leaving frustrated, disillusioned claimants. Even if these claimants may ultimately be "successful" in their appeals, this fact may be almost academic in light of the financial and emotional price they have paid in the interim.

The Board's Compensation Services Division has recently produced an Action Plan for 1991-1992. The plan recognizes that "to be effective in the 1990's and to meet the challenges ahead, the Compensation Services Division must be prepared for change. To this end, a philosophy of management was created in April 1990 to facilitate the process". Some points contained in the philosophy of management include: "communicate openly and effectively; foster an open and trusting environment; treat our clients and fellow workers in a courteous manner - with dignity and respect".

The Action Plan recognizes that the most critical issue facing the Division is the lack of sufficiently trained staff to handle the significant volume increases of the past few years, and that this factor continues to have a negative impact on the quality of decisions, the ongoing management of claims and the level of service which the Board is able to provide to clients. The Board is developing an implementation plan to achieve this goal of improved service to clients. We support the Division's commitment, as stated in its Action Plan, to improve service and agree that the ability to be flexible, innovative and responsive to change will assist it in achieving its mandate.

Last year we reported that the Board agreed to establish guidelines and objectives for the field investigation unit, and will take the lead in establishing protocol with other agencies. The Board set up a committee which has recently produced a draft Procedure Manual to deal with this, and the manual should be in final form by June 1991.

We have had increasing concerns over the theoretical nature and poor quality of some employability assessments, which are used to determine if a worker has suffered a projected loss of earnings higher than that reflected by the functional pension awarded. If so, the worker is awarded the higher of the two figures. In order to determine whether there is a projected loss of earnings, the Rehabilitation Consultant projects or "deems" what jobs are both suitable and reasonably available to the claimant in the long run. The likelihood of an older, disabled worker actually being able to get the type of job that he or she is "deemed" physically able to do, in view of competition for such jobs from healthier, younger workers, is sometimes not explored sufficiently by the Rehabilitation Consultant. As well, the actual duties and physical requirements of such deemed suitable jobs are not always completely documented by the Rehabilitation Consultant. Such complete documentation at the time of the employability assessment is required in order to consider accurately whether the limitations imposed by the compensable disability preclude the worker from physically performing the deemed suitable jobs. The Board is currently addressing these and other concerns in a research project designed to deal with the backlog and quality of employability assessments. A format is being developed to ensure consistency, logic and completeness in decision-making relating to future employability assessments. We look forward to the successful completion and implementation of this project.

We are hopeful that the "climate for change" envisaged by the Board's Compensation Services Division will extend to a climate of co-operation, open communication and trust between our office and the new Board of Governors. Certainly the fact that the new Board of Governors and Chairman have been soliciting ideas from interested parties regarding the role of the Appeal Division under the new structure of the WCB and proposals on issues considered to be of concern is a welcome and positive change. It is also consistent with the Advisory Committee's Report and Recommendations on the Structures of the Workers' Compensation System in B.C. (October 31, 1988), in which it was stated:

> The Workers' Compensation Board has great powers and obligations, the exercise and discharge of which may profoundly affect individual workers and employers. The Board is also the immediate guardian of the important social policies reflected in the legislation. It follows that the Board's officers and personnel should have regular input from the parties of interest and the public generally, and should be accountable in the usual ways in the carrying out of their duties.

Communication and Implementation

The policy of the Workers' Compensation Board is that the implementation of Medical Review Panel and Review Board decisions is to take place as quickly as possible. However, even when there is a commitment that decisions be reached expeditiously, problems are sometimes attributable to the difficulty in co-ordinating the process and the lack of communication with the worker as to the status of the implementation. Cases involving rehabilitation decisions about the ability of the injured worker to return to his or her previous work, medical decisions about the extent of permanent disability related to the injury, and claims decisions related to the wage rate on which benefits will be based may all have to be reached before a full implementation decision can be made and involve a number of Board personnel in the process. Often some of the personnel involved are in the regions, while other decision-makers are in Richmond.

Decisions may also be delayed because there is only one file and numerous and competing demands to have it available in order to arrive at a decision. In these complex claims, there is no Board representative assigned the responsibility of communicating with the worker about the overall progress of the decision-making. Although the rehabilitation consultant is often the person who has the most frequent contact with the worker, he or she is not responsible for apprising the worker of the claims and disability award aspects of the claims. A claims adjudicator may be theoretically responsible for co-ordination but may have had little involvement with the worker following initial decisions.

Two complaints with respect to the implementation of Medical Review Panel decisions exemplify the problem. One man had submitted his claim for lung impairment in 1985; his claim was not accepted until March 1990, when a Medical Review Panel related his lung problem to his former work. He contacted our office in June 1990 as he still had received no benefits from the Board and was experiencing financial difficulties. In August 1990 the Board paid him benefits under "CODE R", or continuity of income, a policy that allows the payment of interim benefits when there is a likelihood of a high functional pension or a pension award paid on a loss-of-earnings basis.

In a similar case, a worker complained that following a successful appeal to a Medical Review Panel in 1989, he had received retroactive wage-loss benefits up until March 1990 but had received no further benefits by the time of his call to our office in July 1990. The reason given for the interruption in benefits was that his medical condition had stabilized in March 1990 and the Board was deciding on his pension award. In August 1990, the Board decided to bridge the gap in benefits by paying continuity of income payments. Those payments continued until he received his pension decision.

Another complaint of a similar nature was received from a worker about the problem he had in obtaining a clear picture of the assistance the Board was willing to provide. A Review Board found in May 1989 that the former truck driver had a disability related to his work injury and that he should receive rehabilitation assistance and retraining. The worker and his representative complained to us in May 1990 that although interim rehabilitation benefits were being paid, there was no clear communication about the long-term rehabilitation plan and there had been conflicting medical opinions expressed to the worker by Board doctors that could affect the pension decision, which had yet to be rendered. We contacted the Board regarding the delay and communication issues, and in June 1990 the worker's doctor wrote to the Board that the worker had been on a "merry-go round to nowhere" ever since benefits had been initially terminated; the physician asked the Board to sort out the decisions so that the worker could "get his life back on track." A decision regarding the pension and extent of rehabilitation to be offered was eventually made in August 1990 after the involvement of rehabilitation and claims managers. The worker has appealed that decision back to the Review Board.

We understand that the Disability Awards Department will be initiating a "bring forward" system so that the pension adjudicator will have more information readily available even without the file and will monitor the progress of employability assessments through that system. The Board recognizes the need to keep claimants fully informed and has attempted to ensure a cohesive approach through team meetings. However, the problem remains that in some of the more complex claims, team meetings do not occur and there is frustration for the workers and for Board personnel due to the fact that a more co-ordinated approach does not always take place. The Board is now reviewing its procedures to determine ways of improving communication and services in such cases.

Injured machinist launches new career

A 56-year-old former machinist from a small B.C. town was actively involved in a creative effort to re-enter the work force. His doctor said that he was unable to continue employment as a machinist after developing tendonitis, and the Board had accepted his claim.

After exploring other possibilities, the best long-term alternative appeared to be for the Board to provide a cash rehabilitation settlement to enable the worker to establish a computer-training centre. The worker said he was encouraged by his Rehabilitation Consultant to submit a proposal, and he promptly did so. This proposal, which estimated a start-up cost of $14,600, was sent to the Board in August 1989.

To assess demand for his new business, the worker had sent out brochures to potential customers. He was subsequently swamped with customer replies, requesting an early start for the centre. The worker said that he was informed by the Rehabilitation Consultant in October 1989 that the consultant had recommended approval of the plan and was hopeful that his recommendation would be accepted by his Manager. The worker understood that a decision would be made within two weeks. In light of demands from prospective customers and the Board's encouragement, the worker felt that he should not delay and began to liquidate personal assets to set up the centre.

Over the next 10 months, the worker experienced increasing financial and psychological pressure as he struggled to establish his business without the Board's anticipated assistance. A major reversal occurred in late January 1990, when the Board temporarily decided that the worker could return to employment as a machinist after all. This decision, which was made by a new Rehabilitation Manager, was reversed following representations from the complainant's doctor and from the Workers' Advisor, who met with the Director of Rehabilitation Services.

In June 1990, the worker said he was informed by the Rehabilitation Consultant that his supervisor had changed again so the proposal would have to be considered anew by a third Rehabilitation Manager.

He was apparently told that this process could take up to a month. When no decision was made within this period, the complainant contacted our office.

A detailed summary of the complaint was immediately prepared and faxed to our Board liaison person, who referred the matter to the new Rehabilitation Manager for reply. (The preparation of a complaint summary in this case was considerably aided by the worker's detailed computerized record of discussions with Board personnel.)

The new Rehabilitation Manager advised us on July 17, 1990 that clarification was still required on the medical question of whether the complainant could return to work as a machinist. He said the file was now with a Board doctor, who should be making a decision in two to three days. (The opinion of this Board doctor had been cited by the former Manager as the basis for denying the rehabilitation settlement in January.)

On July 30, 1990 the new Rehabilitation Manager telephoned to advise us that the settlement had been approved, and the worker received his cheque for $14,600 in early August. This was the amount requested a year previously. The worker was very pleased with the outcome and happy to be employed once again.

The Board's policy states: "One of the major objectives of the Board in the rehabilitation of injured workers is to assist them to maintain useful and satisfying lives and to return them to the labour force where appropriate. In order to achieve this goal, the Board feels that early intervention by the Rehabilitation Consultant is necessary even if it is only to provide reassurance and encouragement to the worker and to ensure that he or she is maintaining a positive outlook."

However, in this case it appeared that administrative problems associated with changes in Board personnel significantly delayed the ultimate positive decision. Although the worker was initially encouraged in his rehabilitation plan by Board staff, he felt that such encouragement was not sustained or consistent. Fortunately, the worker's initiative and ability to start and operate his new business while awaiting Board assistance resulted in a successful ending.

Suicide alert policy

In the past year, several cases came to our attention in which references to a worker being suicidal did not trigger a careful review of the case. There are certainly cases in which depressive problems may be unrelated to a compensable injury. However, we were concerned that the Board had not conducted further review in these instances to determine if the cause of the depression was related to the compensable injury, or if the information regarding the worker's state was a ground to reconsider a previous decision.

As well as the need to ensure that all aspects of a worker's entitlement are considered, there could also be implications for the safety of Board personnel once there has been mention of serious depression. Whatever the cause of the worker's depression, it is imperative that the Board deal with such workers in a sensitive, timely and thorough manner, and in co-ordination with the attending physician.

We raised this issue with the Director of Claims, who stated that the policy has always been to take such matters very seriously. He sent a memo for senior managers to pass on to their staff, emphasizing that when reference is made that a worker is possibly suicidal, the file should be pulled and the attending physician contacted immediately, preferably by a Board Medical Adviser. The memo stated that in such cases the matter should be brought to the attention of senior management and one of the directors so that all aspects of the situation could be thoroughly reviewed, regardless of the status of the claim.

Depressed worker disputes choice of review panel

A worker whose case had been referred by the Board to a Medical Review Panel of neurologists complained to our office that such a panel was not an appropriate one to examine the cause of his depressive illness. The worker related the cause of his problem to a head injury sustained at work in 1987. A letter sent by the worker's psychiatrist to the Board indicated that the man was depressed to the point of being suicidal. No acknowledgement was made by the Board to the psychiatrist of the severity or urgency of the problem; the letter from an appeal administrator merely advised that an upcoming Medical Review Panel of neurologists could at their discretion refer the question of psychological disability to a psychiatrist.

Following a decision by the Commissioners that the man did not have symptoms that were disabling or related to his head injury, further evidence had been submitted from psychiatrists and psychologists. There had also been a deterioration in the worker's psychiatric symptomology to the point that he was hospitalized for a period. The Board's decision to refer the matter to a Medical Review Panel of neurologists had been made prior to the submission of the preponderance of evidence of a psychological nature. A request by the worker's adviser that the Commissioners refer the matter to a Medical Review Panel of psychiatrists or reconsider their prior decision on the basis of new and significant evidence had been denied.

The man was severely ill, and the neurological panel had been postponed indefinitely due to a shortage of available specialists because of the withdrawal of services related to the doctors' fee dispute at that time. We considered that the decision to defer the matter to a panel of neurologists, who had a discretionary option to seek expert psychiatric opinion, constituted an unfair procedure. We also found the Commissioners' decision not to reconsider the matter on the basis of new and significant evidence to be unfair, since the evidence submitted after the Commissioners' decision appeared to meet all the criteria established in the policy manual on what constitutes such evidence. If the Commissioners had reconsidered the decision and not changed their original conclusion, the worker would have had an appeal directly to a Medical Review Panel of psychiatrists. We concluded that by neither reconsidering the decision nor referring the matter to a panel of psychiatrists, the Commissioners were not allowing the worker's case to receive an expert review on the psychological issue. We also found that the Commissioners had failed to give adequate reasons for their evaluation that the more recent evidence was not new and significant.

The Commissioners initially declined to implement our recommendations on the basis that an appeal to a Medical Review Panel of neurologists had already been initiated, and that the question of a physical or organic cause of disability had to be addressed. We agreed that an organic origin of the depression had to be scrutinized, but submitted that it was equally important that all causes of the psychological condition be reviewed.

Following our final recommendation that the Commissioners either reconsider their decision or refer the matter to a Medical Review Panel of psychiatrists in conjunction with the Medical Review Panel of neurologists, the Commissioners accepted the latter recommendation. They stated that one of the reasons they accepted the recommendation was further information related to the worker's second hospitalization. The Commissioners agreed to have the worker examined by a panel of psychiatrists and a panel of neurologists co-ordinated by a common chairman. Unfortunately, the worker died suddenly, and the further review of his case will be conducted following a determination of the cause of death or consideration of other new significant medical evidence.

Loss-of-earnings decision letters

The Board pays two types of pensions. The first is a functional award, which is calculated as a percentage of total disability; for example, a person who has lost mobility in a knee could receive an award of 25 percent of total disability. However, if the person was a high-wage earner before the injury and it was established that as a result of the injury the earning capacity of the worker has been reduced, the Board must then calculate the pension on the basis of the difference in earning capacity before and after the injury.

Pensions awarded on this loss-of-earnings basis are often significantly higher than those awarded on a straight functional basis. To determine if a loss of earnings is likely, the Board conducts an employability assessment; the assessment determines whether or not there are suitable and available jobs the worker could perform and the earnings rates of those jobs.

In the past, a decision letter described the wage rate and the jobs considered to be reasonably available to a worker if there was found to be no loss of earnings. During 1990, however, we observed that in some cases, letters notifying workers that a decision had been made to deny a pension award on a loss-of-earnings basis did so only in a brief sentence amid a long description of the functional award: "It is considered that the functional assessment of your disability reflects any possible long term loss in earning capacity which may occur as a result of the injury."

Since the decision to deny a loss-of-earnings award is a significant one with potentially great impact on a worker's benefits, we approached the Director of Disability Awards regarding the lack of communication of the results of the employability assessment. He agreed that the reasons for the decision to deny a loss-of-earnings award should be properly communicated, and sent a memo to his adjudicative staff stating that the above sentence was adequate where there is a good indication that the worker will meet or exceed his or her pre-injury earnings. He advised staff that in other cases, however, where there is evidence that the worker is anticipating a loss-of-earnings consideration or where there might be an indication that the worker was not capable of returning to his or her pre-accident employment, it was imperative that a more definitive statement be made about the investigations and the results of those investigations. We were satisfied that this memo addressed the concerns we had raised about the decision letters.

Misunderstanding leads to expensive move

An injured worker told us that on the basis of his understanding of the level of support the Board was willing to provide for his rehabilitation, he had completed his Grade 12 through upgrading and arranged to relocate to a different community in order to take a course. Before the course started, he had purchased a trailer in the new community, and his family left their current accommodation to move into it. Afterwards, a rehabilitation manager told him that the Board would not provide funding for the course or for his move. Instead, the Board would attempt to return him to his pre-injury employment.

Following the man's complaint to several agencies, his MLA, the media and our office, the Board decided to pay for the worker to take the two-year course and the cost of the move. This type of situation could not have been resolved by the appeal process because of the immediacy of the problem. We did not investigate the case further since it was resolved, but believe that it points out the need for clear communication and written undertakings regarding the extent and type of rehabilitation to be offered in each case.

A mercenary suitor

A woman told us that her mother was distraught when a disastrous short-term relationship resulted in the loss of her widow's pension from the Workers' Compensation Board. The mother had notified the Board of her intention to cohabit with a man, and she was subsequently sent a remarriage settlement as a final payment by the Board for her husband's fatal injury. The caller's mother soon learned that the man was interested in her remarriage settlement monies, and the co-habitation lasted only 11 days. In addition, the mother had quit her job in another city because of the new relationship.

Immediately after ending the relationship, the mother asked the Board to reinstate her widow's pension. Her claims adjudicator said that he would request a legal opinion, and subsequently advised that the Board lacked authority to reinstate the pension. Prior to contacting our office, the mother had begun an appeal to the Workers' Compensation Review Board with the assistance of a Worker's Adviser at Compensation Advisory Services.

The statutory provision governing this case was section 19 of the *Workers Compensation Act*, which provides for the payment of a remarriage settlement where a claimant "lives with a man or a woman in the relationship of man and wife". From our understanding of the facts, it appeared doubtful that this type of relationship ever existed. This would mean that the Board was not prevented from reinstating the widow's pension.

The *Ombudsman Act* provides that we may not investigate a complaint where there is an available statutory appeal. This appeal had already been commenced by the Worker's Adviser handling the case. However, an informal review could be requested prior to the appeal, and this avenue was also being pursued. The Manager who considered the review accepted the Worker's Adviser's arguments and reinstated the mother's widow's pension upon repayment of the remarriage monies.

Criminal Injury Section

Resolved	18
Not resolved	-
Abandoned, withdrawn, investigation not authorized	5
Not substantiated	1
Declined, discontinued	10
Inquiries	3
Total number of cases closed	37

The Criminal Injury Section, which is administered by the Workers' Compensation Board, is reviewing all its policies and procedures in a manual which it hopes to complete in 1991.

The Section is continuing its efforts to shorten the delays in the adjudication of claims. The current time lag for adjudication of claims is up to four months from the time all documentation has been received.

We have found the Section responsive to our inquiries concerning complaints about delays and communication.

Persistent applicant wins compensation

A man who had been stabbed in 1972 complained that he had not received compensation as a victim of crime. The man had been stabbed in the heart during a drinking party in a hotel room, and was in hospital for 23 days following the incident. Although the Criminal Injury Section had accepted that he had been a victim of a crime, the man was advised that because he had put himself into jeopardy by taking part in a drinking party in the company of a person he knew to be dangerous, the nature and degree of his contribution made an award for pain or suffering or other loss inappropriate. The complainant stated that he had had no reason to believe that the perpetrator would attack him or that he would be attacked with a knife.

He wrote to the Criminal Injury Section on two occasions complaining about the decision, but was not advised that he could ask for a review by an appeal committee. He was told that as he had presented no new evidence, his claim would not be reconsidered; however, there has never been a requirement that new evidence be presented in order to have an appeal. Furthermore, although the man's claim had been accepted and therefore would cover medical treatment related to the injury, and despite references in his letters to continuing medical problems, he was not advised that medical aid related to the assault would be paid.

We requested that the Board reconsider their decision to deny any compensation for pain and suffering on the basis of some contribution of the victim, as this reasoning appeared to negate the contribution of the assailant.

A committee set up to review the matter responded that the reason for the denial of benefits was not only the contribution of the victim but also the fact that the man had no earnings loss as a result of the injury. They noted that policies and practices have changed since the time at which this man's claim was adjudicated, and determined that his claim had been properly considered within the law, policies and practices of the day. They did not accept that there were sufficient grounds presented to reconsider the earlier decision. However, they wrote that they would have the Criminal Injury Section obtain more details about the man's medical condition since 1972 and if it appeared that there was a basis for reopening the claim on a medical basis, consideration would be given to an award for pain and suffering on the basis of these problems. Following this review, the Criminal Injury Section determined that the man had suffered a degree of pain that could be related directly to the injury from the stabbing and that he had had ongoing symptoms up to the present time. An award was paid.

Award goes to estate of crime victim

The daughter of a deceased victim of crime complained that, as executrix of his estate, she was denied payment of an award to him by the Criminal Injury Section. The Section's position was that non-pecuniary awards such as pain and suffering do not go to the estate. The victim had returned a form to Criminal Injuries accepting the award but had died shortly afterwards of causes unrelated to the injuries suffered in the attack.

We brought this matter to the attention of the Criminal Injury Section. Their initial position was that non-pecuniary awards such as pain and suffering do not go to the estate due to the provisions of section 66(2) of the *Estate Administration Act*. We noted that although this section limits an executor's recovery of damages in respect of pain and suffering, it does not appear to limit such recovery where, in the circumstances of this case, the damages had been calculated, awarded to, accepted by, but not received by, the victim prior to his death. A B.C. Supreme Court case supported our interpretation. We therefore asked the Section to review this matter.

The Section subsequently agreed to pay the executrix the award and agreed to review the matter as a policy issue. This review resulted in a new policy directive. The policy provides that where a claim has been adjudicated, a decision has been made to make an award and then the victim dies, the award shall be paid to the executor in place of the deceased. Further, any right of appeal that would have been available to the claimant lies with the executor. This policy would apply whether or not the "Acceptance of Award" form had been signed by the claimant. The Section also agreed that if any new claim files came to its attention where the new policy should be applied retroactively, the Board would do so. In addition, interest will be calculated and paid to those executors, including our complainant.

Compensation for abused children

A father of two young adopted children complained that an official with the Criminal Injury Section, which is administered by the Workers' Compensation Board, had told him that it would be pointless making a claim on behalf of his children. The reason given was that there was no record of a police investigation of alleged abuse of the children prior to the adoption. This abuse was the crime for which the father sought compensation.

Matters related to the Ministry of Social Services and Housing (MSSH) were already under investigation by this office, and we had confirmed that MSSH officials believed that abuse had occurred in the past. The police had not investigated after apparently receiving telephone information from an MSSH social worker about possible abuse, and the identity of the potential abuser was unclear.

We informed an official of the Criminal Injury Section that contact with the police by MSSH officials had been documented and that MSSH officials did believe that past abuse had occurred. The official suggested that the complainant submit an application, which was done. When the application was subsequently approved by Board officials, the complainant's immediate concerns were resolved.

The complainant was also concerned about the long-term availability of compensation. He explained that the children were currently in treatment with a psychiatrist and immediate access to Criminal Injury funding was not necessary. However, he was concerned that when the children grew up and continued to come to terms with past abuse, access to treatment services should be available when it was most needed. It was impossible to predict if and when this need would arise.

Criminal Injury officials assured us that the approved application could be activated at any time in the future provided that the need for treatment could be linked to the past abuses.

Non-jurisdictional Complaints

The 14,542 complaints received by our office in 1990 represented an increase of 379 percent over the number received a decade earlier in 1980. One reason for the high incidence of complaints appears to be the fact that the existence of the office is relatively well known among ordinary citizens. The range of intake calls on any given day suggests that most people have heard of the Ombudsman office and think of it as somewhere to go when a problem needs resolving. They know we handle complaints without necessarily knowing what kind of complaints we investigate.

Almost half of the complaints received by our office in 1990 were outside our jurisdiction. Citizens who feel aggrieved by the actions of a private or public body frequently have no idea where to turn for help. Often they have a friend or relative who has been in touch with our office before, and this leads to a call to us. Many of those who call about non-jurisdictional problems have already attempted without success to find out about other appropriate avenues for resolving the problem, or have been told that there is no complaint process to help them.

The latter is often the case with callers who have grievances against departments or agencies of the federal government. All provinces except Prince Edward Island and Newfoundland have an Ombudsman, and the number of Ombudsman offices worldwide has increased significantly in recent years. This is especially true of new democracies where the role of the Ombudsman is seen to symbolize the guarantees of fairness that are understood to characterize the essence of the democratic system of government in a modern administrative state. Poland and Hungary are examples.

Governments that actively promote the concept of Ombudsmanship gain credibility by demonstrating a commitment to ensure that their citizens, in their dealings with the public bureaucracy, are treated fairly and have an opportunity to obtain a remedy when unfairness has occurred. The government of Canada, which has attained high international recognition for its democratic example, is becoming increasingly conspicuous for its lack of a federal Ombudsman. A bill to establish a federal Ombudsman was first introduced in Parliament in 1977, but was never passed into law. Since that time, the Canadian Bar Association, the Law Reform Commission of Canada and all provincial Ombudsmen have recommended the appointment of a federal Ombudsman.

Some of those who have reservations about the establishment of a federal Ombudsman's office express concern about the expense of running such a body at a time of budgetary restraint. What this argument overlooks is that one role of an Ombudsman, in addressing the causes of systemic unfairness, is to encourage bureaucratic efficiency and reduction of waste. Efficiency in government service tends to encourage fairness. From its independent position outside a complex bureaucratic structure and uninfluenced by political considerations, an Ombudsman office is well positioned to identify inefficiencies and recommend strategies for increasing the provision of fair service at reduced cost.

Some point to the role of the elected representative as the constituent's advocate. This argument was often cited in this province by those who were reluctant to support the introduction of Ombudsman legislation in the late 1970s, when the British Columbia *Ombudsman Act* became law. Elected representatives are generally conscientious in attempting to resolve problems brought to their attention by constituents. From the constituent's point of view, however, the likelihood of receiving fair treatment may depend on the influence wielded by an elected representative, which may vary depending on a politician's place as a member of the cabinet, the government back bench, or the opposition. This variation in itself is inclined to create an unfairness by resulting in different treatment for different citizens, through no fault of the elected representative. Moreover, there is the danger that action on behalf of constituents by elected representatives carries the taint of political persuasion and the appearance of favouritism to constituents who are seen to be friendly to the elected representative's party. Public servants who are contacted by elected representatives on behalf of a constituent may assume that they are being subjected to political pressure, as a result of which the fundamental issue of fairness may be obscured or, worse, made secondary to other considerations.

The effectiveness of the Ombudsman office in British Columbia is shown by the large numbers of people who bring their concerns about government to it, by the high degree of co-operation offered by public servants, and by the high rate of resolution of complaints (see Table 3).

During 1990, this office received close to a thousand complaints about the actions of departments or agencies of the federal government. Where formal appeal mechanisms were known to us, these were described to complainants. Where informal assistance could be provided by this office, this was offered. In other situations, our general practice was to provide the telephone number of the constituency office of the complainant's Member of Parliament. In many instances as well, the subject matter of the complaint involves joint federal-provincial responsibilities, and we establish contact with the relevant federal agency as a necessary part of resolving the provincial aspect of the complaint. This is especially true of the many programs that receive joint federal and provincial funding.

The following are representative examples of complaints received against departments and agencies of the federal government in 1990:

Employment and Immigration

Sometimes when we investigate a complaint against a provincial government body, the causes of the problem are discovered to have originated with the federal government, and we do what we can to achieve a resolution by raising the matter with the federal Department involved. Such was the case when a woman complained that, with her baby due to be born in less than a week, the Ministry of Social Services and Housing refused to consider her application for income assistance and the Medical Services Plan (MSP) refused to provide her with coverage so that the hospital costs related to the birth would be covered.

The woman's story was a complicated one. She had been born in Sweden to a Canadian mother and a Swedish father. When she was 12 years old, her parents separated and the mother took her children back to Canada, where she applied under the *Immigration Act* for Canadian citizenship for her children. The documents were approved and passports issued.

At the age of 19, the daughter returned to Sweden to live with her father and work. While she was there she received a letter from the Canadian Department of Immigration. It told her that a mistake had been discovered: because she hadn't taken an oath or signed the documents herself when her mother had arranged the citizenship application, her Canadian citizenship was void and she would have to apply again.

At the age of 21, the daughter decided to return to British Columbia. As she had not submitted a new application for citizenship, she sought advice from the Canadian consulate in Sweden. After checking with the Department of Immigration, the consulate told her it would be best to wait until she got to Canada to clear the matter up. On arriving in British Columbia, the woman filled out the necessary forms and awaited her citizenship documents. Shortly afterwards, she discovered that she was pregnant.

The woman was in a state of considerable distress when she contacted us with the baby about to be born. Because she had no proof of Canadian citizenship, she had been unable to obtain the social insurance number she needed before she could get a job. As a result, she was forced to apply for income assistance, only to be informed that she wasn't eligible without proof of citizenship. She was also unsuccessful in her attempt to obtain MSP coverage for herself and the child she would soon have.

The Medical Services Plan and the Ministry of Social Services and Housing told us they had no authority to issue benefits to the woman until she produced the required documents. Rather than pursue the matter further at the provincial level, we called officials at the Department of Immigration, described the results of the lengthy delay in remedying a mistake that had been made by the Department in the first place, and asked the Department to call the Medical Services Plan and the Ministry of Social Services and Housing and sort out the situation. A day before the baby was born, the woman called to tell us that she had just received word that she had been approved for MSP coverage.

Indian Affairs and Northern Development

A native woman told us she had submitted a claim for eyeglasses she needed but it hadn't been approved. It was some time since the claim had gone in, and she was confused about what governmental agency she had been dealing with. She wondered if it was the B.C. Medical Services Plan.

When we learned that she was a status Indian, it became clear that she had been dealing with the Department of Indian Affairs, which provides medical benefits for status Indians on and off reserve. We suggested she call them.

Later the woman called back to say that when she called the Department of Indian Affairs, no one had answered the phone. To expedite matters, we called the Department on her behalf, and got no answer. After several further attempts, we were able to get through, only to be advised by one official that the Department doesn't pay for eyeglasses and by another official that the Department does pay for eyeglasses but didn't have any record of a claim by the complainant. In due course, it was confirmed that eyeglasses were covered under the benefits plan and that the woman's claim had been received some time earlier but had not been processed because of chronic delays.

Unemployment Insurance Commission

Any change in circumstances in the lives of people receiving unemployment insurance benefits can significantly affect the timing and amount of their payments. This was discovered to be the case by an unemployed worker from Quebec who moved to British Columbia after hearing that there were jobs for welders at an industrial site. When he arrived, he found out that there were no jobs available immediately. With a wife and family to support, he was entirely reliant on his UIC cheque. When he contacted the Unemployment Insurance Commission, he was told the cheque was "in the mail". That being the case, the provincial Ministry of Social Services and Housing refused to consider his application for assistance. Our office was able to ensure that the caller received emergency assistance from the Ministry, but weeks continued to go by without receipt of the UIC cheque and no answers about its whereabouts.

Another man, under UIC sponsorship for retraining, was taking a course at a community college. After being subjected to repeated instances of harassment because of the colour of his skin, he felt unable to continue in the program and dropped out. He explained the reasons for his decision to Unemployment Insurance Commission officials, who told him that his excuse was inadequate and that his UIC benefits would be cut off immediately. We put him in touch with the Vancouver Community Legal Assistance Society, which provided him with a lawyer who represented him in his appeal. As a result, the earlier decision was overturned after the man had been without an income for several weeks.

Fisheries and Oceans

After making a substantial financial offer to purchase a 10-acre piece of property with a flowing stream and a gully channelling into it, the prospective purchasers noticed some stakes in the ground and asked the owner what they meant. He said he had no idea but would find out. First he called the municipality, which professed ignorance of the matter and suggested he call the B.C. Ministry of Environment, which might have some involvement with the wetland. A call to the Ministry of Environment met with the advice that the landowner get in touch with the federal Department of Fisheries and Oceans, which might know about the stakes.

Fisheries and Oceans confirmed that it was responsible for the stakes. They had been put there, it said, to mark about six of the 10 acres as prohibited from development under the *Fisheries Act*, as the runoff from the land provided nutrients to salmon-spawning streams. On hearing this news, the prospective purchasers of the land withdrew their offer.

Despite repeated efforts by the landowner, he was unable to obtain from any government Department a specific explanation of the legal authority under which the action had been taken, or what he considered to be adequate reasons for the action. At one point he was told that the action had to do with parkland preservation, but he was unable to determine how this fell under the *Fisheries Act*. The owner's position was that if was to be denied the free use of his property, he should be compensated for his loss.

National Health and Welfare

A common complaint about Income Security Programs of the Department of Health and Welfare relates to the payment of family allowance cheques. We often receive complaints about lengthy delays in the re-addressing of such cheques after a child moves from the home of one parent to that of the other, or is returned to the family home after being in the care of the Superintendent of Child Welfare.

Other complaints have to do with pensions. An elderly recipient of an old-age security pension lived with a woman to whom he was not legally married. As he was in ailing health, she would put his pension cheque in the bank for him and pay his expenses. When his physical health deteriorated further, he went to live in a nursing home, where the woman visited him every day. One day one of the staff overheard the woman tell the man that she wasn't sure if he had enough money, and she wasn't sure where it was. Suspicious, the staff member notified Income Security Programs of Health and Welfare Canada, which immediately stopped sending the pension cheques to the man and directed them instead to the B.C. Public Trustee. The result was that the Public Trustee would send monthly maintenance payments for the care of the man, deducting a percentage for its services. Puzzled about this turn of events, the woman sought our assistance.

After being informed by Income Security Programs of the reasons for their action, we established that the reason the woman had not been sure how much money was available was that she had bought some bonds in the man's name as an investment for him. Moreover, there was no evidence of mental incapacity which would require the Public Trustee to act on the man's behalf. It appeared that Income Security Programs had made no effort to investigate the concern brought to their attention before diverting the pension payments to the Public Trustee. As a result of our intervention, the pension cheques were redirected to the pensioner.

Veterans' Affairs

An elderly veteran of the Second World War began to suffer symptoms of epilepsy some years after the war. He was convinced that the illness had been brought on by a head injury he had suffered on a battleship during the war. After being treated in the ship's infirmary, he had been sent to a hospital ashore. He told us that after the injury he began to suffer regular headaches.

After the diagnosis of epilepsy was confirmed, the man applied to the Department of Veterans' Affairs for a disability pension. The hospital at which he had been treated during the war no longer had its records, and all medical records on the battleship had been lost when it was sunk by a submarine. All the veteran had was the opinion of one neurologist that it was probable that the epilepsy was caused by his war wound. The decision of the Canadian Pension Commission that the epilepsy was not attributable to active force service was upheld by the Veterans' Appeal Board. The veteran argued that the *Pension Act* should have been interpreted to give him the benefit of the doubt. We suggested he contact the Minister of Veterans' Affairs to ask that the matter be reviewed. He had already done so, and consequently had no further avenue by which to voice his concern that he had been unfairly treated.

Canada Post Corporation

A woman who lived in the small community of Kitchener, B.C., complained that even though she was using the correct postal code, much of the mail sent to her arrived at an address in Kitchener, Ontario. We suggested she contact the Better Business Bureau, which has an arrangement with Canada Post to investigate complaints against the Crown corporation.

Another person complained that Canada Post had lost a money order which she had sent as rent to her landlord, in the same city, by Special Letter. Two weeks after the mailing, the letter hadn't arrived. Canada Post told the woman it had no way of tracing where the letter might have gone, but would send her a free new Special Letter. The woman considered this an unsatisfactory response.

Transport

Prior to approaching this office, the complainant had some years earlier lost part of a finger while working on a commercial seine boat whose net lines were strung between the boat and a tree or stump on a nearby shore. The complainant explained that this was extremely dangerous procedure which had been for the most part outlawed in the United States, where applicable law now requires that motorized skiffs provide tension on seine net lines, in place of immovable objects on shore. The complainant stated that the tension on some of the shore lines often resulted in injury or death when the lines were being untied or when they snapped under the weight of a load of fish.

A discussion between this office and the United Fishermen and Allied Workers' Union corroborated the dangers of this practice, which had been described in 1985 by a TV investigative journalist as "the most dangerous job in Canada". A preliminary investigation by this office revealed that jurisdiction for the creation of regulations governing safety practices on fish boats resides within the Canadian Coast Guard, a division of the Federal Ministry of Transport. Although the Workers' Compensation Board of British Columbia, a provincial entity, pays injury claims resulting from activities aboard fish boats, the Board has no jurisdiction to inspect fish boats for safety standards, nor does it have jurisdiction to establish and enforce such standards. The complainant was therefore referred to the Western Regional office of the Coast Guard, with the advice that the creation of safety standards for fish boats is by its nature a political issue, and the complainant would have to direct his efforts with this in mind.

* * *

The most common non-jurisdictional areas of complaint about matters other than actions of the federal public service in 1990 were: landlord/tenant disputes - 1,903; consumer transactions - 630; private legal matters - 428; municipalities and regional districts - 245; police actions - 237; employment grievances - 233; and lawyers' actions - 128. By means of a comprehensive, computerized referral system, we are generally able to provide relevant information to callers about avenues of redress for complaints that are outside our jurisdiction. The following list describes some of these avenues.

1. *Landlord-tenant disputes*

Complaints against landlords and tenants are routinely referred to the Residential Tenancy Branch, which provides information about the rights of tenants and landlords under the *Residential Tenancy Act* and appoints arbitrators for disputes. Although the Branch does not have a toll-free number, its practice is to promptly return the long-distance calls of complainants who phone its offices in Victoria and Vancouver.

If it appears that both landlord and tenant may be amenable to resolving differences through mediation, we may inform a caller of the services provided by the volunteer-operated dispute resolution centres in many communities which provide mediation for a minimal fee.

Complaints about onerous rent increases are referred to the Rental Housing Council of B.C. Complainants whose grievances remain unresolved after contact with the Residential Tenancy Branch may be referred to the Lawyer Referral Service, or are advised about small claims court procedures. Complaints about actions of the Residential Tenancy Branch are jurisdictional and are investigated by our office.

The Ministry of Labour and Consumer Services' brochure called *Renting in British Columbia* provides useful information about the rights and remedies of landlords and tenants and is available at any government agency or by calling the Ministry at 387-3171.

2. *Consumer transactions*

The type of referral given may vary considerably, depending on the nature of the complaint. Inquiries about consumers' rights and complaints about infringements of provincial consumer legislation may be referred to the Investigation Services Branch of the Ministry of Labour and Consumer Services, which has offices in Kamloops, Kelowna, Prince George, Vancouver and Victoria.

The Better Business Bureau (in Vancouver and Victoria) provides mediation and arbitration services where parties are unable to resolve a dispute and have no desire to take a matter to court. Complainants who must resort to litigation may be advised about procedures for undertaking an action in small claims court, where parties may seek a judgement without going to the expense of hiring a lawyer. The monetary jurisdiction of small claims court has recently been raised from $3,000 to $10,000.

Complaints about some types of businesses may be referred to private associations governing the practices of those businesses. For example, a purchaser of a new car who has a dispute with the dealer may be given the number of the Automobile Retailers' Association. The remedy for other complaints about specific businesses may be provided by a government agency such as the Registrar of Travel Agents, who administers an insurance fund that is used to compensate consumers who have suffered losses that result from the bankruptcies of travel companies.

Callers who seek advice about the management of consumer debts may be referred to the Debtor Assistance Branch of the Ministry of Labour and Consumer Services, which provides debt counselling and practical advice about ways of consolidating debts and arranging orderly payment of debts.

The Ministry of Labour and Consumer Services publishes two extensive pamphlets which contain a wealth of up-to-date information about means of resolving consumer complaints. The *Consumer Assistance Directory* and *Consumer Guide to Credit* and Debt may be obtained free from any government agent's office or by calling the Ministry at 387 3171.

3. *Private legal matters*

Disputants in private matters often assume that litigation is the only practical way of finding a solution without considering the advantages of mediation. Callers who are interested in attempting a negotiated settlement are informed about the increasing numbers of local dispute resolution centres that offer their services at minimal cost.

Callers looking for a lawyer to represent them in a civil suit are given the number of the Lawyer Referral Service, a program that provides to callers the names of lawyers in their communities who specialize in the area of law in which a caller requires legal assistance. An initial half-hour interview with a lawyer obtained through this service costs $10. Callers seeking information about a specific legal matter may also be given the number of Lawline (660-4673 in Vancouver) and of Dial-A-Law (687-4680 in Vancouver, 1-800-972-0956 elsewhere in B.C.), a telephone service in which prerecorded tapes providing information on a variety of legal topics are played at the caller's request.

If a caller wishes to proceed to litigation without a lawyer, and the amount sought is under $10,000, we explain how to initiate an action in small claims court.

4. *Municipalities and regional districts*

The jurisdiction of the Ombudsman to investigate complaints about actions of municipalities and regional districts is provided by sections 4 and 5 of the Schedule of the *Ombudsman Act*. In spite of recommendations by the Union of B.C. Municipalities that these sections be brought into force, they have not yet been proclaimed. Generally, we refer complaints against municipalities to the Inspector of Municipalities in the Ministry of Municipal Affairs and Culture. If callers are unhappy with the handling of complaints by the office of the Inspector, they may then request an investigation by our office.

5. *Police actions*

Policing in British Columbia is the responsibility of the RCMP, except in the 12 municipalities that have their own forces. The procedure for complaining about the action of an RCMP officer is a four-step process. For example, a resident of Sooke who has such a complaint should first speak to the local officer of the detachment. If that contact fails to produce a satisfactory resolution, the next step is to call the appropriate senior officer - in this case, the officer commanding the Victoria subdivision. The last two steps, available only if the problem cannot be resolved at lower levels, are contact with the Commanding Officer of the province and, finally, the Public Complaints Commission, which takes collect calls at (604) 666-7363.

The equivalent steps in the process of complaining about the actions of municipal police are: (1) local officer of the division; (2) officer in charge of the division; (3) chief constable of the municipal force; and (4) B.C. Police Commission (660-2385 in Vancouver; 387-0020 in Victoria).

Through an informal arrangement with both the RCMP and municipal forces, it is our practice to receive complaints about police actions. Once the complaint is known, we then call the appropriate officer - for example, the officer commanding the subdivision (RCMP) or the officer in charge of the division (municipal forces). If it is the wish of the complainant, a meeting between that officer and the complainant is tentatively arranged. This helps to expedite the complaint process.

6. *Employment grievances*

Callers with complaints related to work conditions and wages are generally given the number of the Employment Standards Branch of the Ministry of Labour and Consumer Services. This Branch provides information about the rights of employees and employers and investigates complaints about breaches of employment standards legislation. If the complaint relates to a matter of discrimination within the jurisdiction of the Human Rights Council, we will refer the caller to that body.

7. *Lawyers' actions*

Callers who are upset about lawyers' fees or about any other lawyer's action that they think may be professionally inappropriate are advised to contact the Law Society (669-2533), which licenses lawyers, provides fee mediation services, investigates complaints about lawyers' behaviour, and, if necessary, conducts disciplinary hearings into allegations of wrongdoing.

* * *

The following examples further illustrate the variety of non-jurisdictional complaints received during the year:

MLAs and the Ombudsman

The executive assistant to a Member of the Legislative Assembly called to ask our advice about whether or not the MLA should write to us on behalf of a constituent who had been given a traffic ticket. Apparently an irate bus driver had told the police that the constituent had committed a traffic infraction, which the constituent denied. The constituent had gone to court to fight the ticket, the bus driver had failed to show up as a witness, the charge was thrown out, and the constituent was sent a lawyer's bill for $3,000 for defending the case. She thought the bus driver - or someone - should pay her legal costs.

The executive assistant was concerned that, if the MLA wrote to us on his constituent's behalf, it might be perceived as political interference. We assured her that it is neither uncommon nor inappropriate for MLAs to contact us on behalf of constituents. It is a proper function of elected representatives to seek to resolve their constituents' grievances, and bringing matters to the attention of our office is an effective and non-political means of attempting a resolution. Having said that, we advised the caller that this complaint was outside our jurisdiction and provided her with referral information.

One complaint leads to another

A man called to complain that he was being harassed by a collection agency for a debt that wasn't his. He was particularly annoyed that the collection agent was leaving what he considered abusive messages on his answering machine.

We gave him the number of the Director of Debt Collection for the Ministry of Labour and Consumer Services. The Director of Debt Collection is responsible for licensing collection agencies and investigating complaints about their practices.

The man then asked what our office did. Investigate complaints against the provincial government and its agencies, we told him. That must keep you busy, he said. Quite so, we agreed. If that was the case, he said, he'd like us to investigate a complaint against B.C. Hydro, for whom he had done some electrical work.

The pacifist skater

A young man who described himself as a "pacifist skater" sought our assistance in attempting to retrieve his skateboard from the police. His story was that he had been given a ticket for skating in a downtown area, in contravention of a city bylaw. The officer issuing the ticket confiscated the skateboard and told him it would be returned to him once he paid the ticket. However, when the young man paid his ticket and asked to have skateboard returned, he was told that it had been lost and nothing could be done about it. He described the lost item as a black skateboard with a decal of the Tower of Big Ben surmounted by a crown of feathers. Complete with deck and trucks, the board had cost him $220.

We related the complaint to a senior official of the municipal police force. He later reported to us that an initial search in the customary exhibit locker had failed to turn up the exhibit and that the complainant would be compensated for the cost of the board if it couldn't be found. Later he called to let us know that a further investigation had located the skateboard in a second exhibit storage locker and that it would be returned to the owner. The cause of the problem had been the absence of a centralized exhibit storage system.

Let's retire to Lotusland

A former Vancouver resident wrote to us

from Toronto requesting information on services available to seniors in British Columbia. She said that she planned to return to Vancouver now that she was a senior, but was unable to find any of the information she wanted in the Vancouver telephone directory.

We referred the woman to a number of private and public resources, most of which are listed in the immensely useful "Red Book", a directory of services published by Information Services Vancouver (875-6381).

All the signs of a scam

A newspaper ad seeking people to stuff envelopes caught the eye of a woman who wanted to earn an income at home. Soon after she wrote to the Burnaby box number listed in the ad, she received a reply asking her to send the company $7 in cash for further details about the job. She sent the money. Six weeks later, after hearing nothing, she called our office to find out if the company was legitimate.

We contacted the Companies Branch, which had no record of the company. We suggested to the caller that she contact the RCMP or the Investigations Branch of the Ministry of Labour and Consumer Services. We were advised by the RCMP that investigations of scams soliciting cash are often fruitless. This is because it is relatively simple for anyone to obtain a post office box number through a storefront post office without providing their real name and address.

Great ball team, let's move

A small city in the interior had two high schools. A student at one wanted to move to the other because she was a keen basketball player and the school provided excellent coaching. The principal of her school turned down her request to change schools, saying she lived in the wrong part of town. Nor had school board officials been sympathetic to her request. Her father called us to see if anything could be done. He wanted the best for his daughter, and he had even considered moving close to the preferred school, but such an action seemed rather drastic.

We told him about the provisions of the *School Act* that allowed him to appeal decisions to the school board chairman and the district superintendent. However, we suggested that prior to pursuing that route he consider negotiating with both principals to see whether the daughter's wish might be accommodated if the school she wanted to attend did not have a full enrolment. He thought that seemed like a good idea and said he'd give it a try.

No birth certificate? Watch out

Children without birth certificates may be in for an unpleasant surprise when they reach the age where they want a driver's licence and a job. Without a birth certificate, they may be unable to prove their identity to the satisfaction of the government. Result? No driver's licence or social insurance number.

The father of a 16-year-old boy called to say that his son was very upset that he could get neither a driver's license nor a social insurance number. The boy had been born in a hospital in northern Quebec, and three years later the family had moved to British Columbia. It did not occur to the parents that their son would need his birth certificate until he went to apply for a B.C. driver's licence. He was unable to obtain it because he lacked "primary documentation" to prove his identity. Primary documentation includes items such as birth certificates, baptismal certificates, passports and citizenship papers. He then went to apply for a job and was told that he would need his social insurance number, which again he was unable to obtain because he could not prove his identity.

The parents wrote to the Vital Statistics Department in the province of Quebec and were told that there was no record of their son's birth. Nor was there any baptismal certificate to go by, as the child had not been baptized. His parents did not speak French, so they were having some difficulty communicating with authorities in Quebec, and they wanted to find out if there was any way of resolving the problem of proving their son's existence and birth.

We called the Vital Statistics Department in Quebec to find out what procedures had to be followed. We learned that the parents would have to obtain a court order in Quebec instructing the municipality in which the son had been born to insert his name in the civil register. In order for this to happen a Quebec lawyer would have to make application to a judge and provide the hospital records as proof of the son's birth. Fortunately, the family still had a friend in the community that they had lived in in northern Quebec who could make the necessary arrangements with the hospital and a lawyer; otherwise they would have had to retain a lawyer in B.C. to correspond with a Quebec lawyer. Nevertheless, it would likely be a month or two before the son would have the necessary documentation to go ahead and get his driver's license and social insurance number.

Birth certificates are also necessary to obtain passports for children, so if you are planning a trip abroad with your children, plan ahead.

Child's hysterectomy delayed

A woman was upset that her 10-year-old cousin, who was developmentally disabled, was scheduled to have a hysterectomy. The child's mother wanted the operation carried out, but both the father and the complainant were opposed.

We suggested to the complainant that she contact the B.C. Association for Community Living. Following consultation with doctors at the Children's Hospital, the lawyer for the association intervened to delay the operation by at least two years, ensuring that the girl's relatives would have sufficient time to ensure that any future decision made regarding the operation was in her best interest.

No proclamation, no investigation

In our 1989 Annual Report, in the section highlighting the Ministry of Regional and Economic Development, we outlined the saga of the B.C. Custom Car Association's dealings with the province, which, after our investigation, resulted in an agreement for the province to finance the reconstruction of the association's racing facilities to the extent of $2 million.

This agreement was not all that was necessary for smooth sailing, however; the complainant subsequently approached this office to complain that local government, which the complainant believed to have previously supported the race facility construction, had unfairly rezoned land upon which the development would take place, in order to prevent commencement of construction.

We advised the complainant association that local government is an "unproclaimed authority" under the *Ombudsman Act*, meaning that the legislature originally contemplated that this office have jurisdiction to receive and investigate complaints about municipalities and regional districts. At this time, government has chosen not to proclaim (bring into legal force by order-in-council) the Schedule, apart from sections 1 and 2 dealing with provincial Ministries, Crown corporations and similar entities. We did, however, maintain a "watching brief" on the matter due to our involvement with previous investigation.

The complainant association subsequently hired a lawyer, who was successful in having the rezoning bylaw set aside by the court, thus removing the last roadblock in the complainant's quest to have its original racing facilities replaced.

An Ombudsman by any other name ...

A woman who had recently received new brochures about the services provided by the federal Information Commissioner and Privacy Commissioner was upset to note that these officials, who had been described in earlier material issued by their offices as "quasi-Ombudsmen", were now referred to as "people's representatives". On inquiring into the reason for the change, she had been informed that it was a plain-language initiative. She didn't think the new wording was plain language at all. She contended that "Ombudsman" carries a meaning that is both respected and well understood, and that to change it to "people's representative", which she considered a meaningless term that poorly describes the function of the Commissioners, was simply confusing. She wanted to know if we agreed.

Complaints about the practices of the Commissioners of Information and Privacy, like those of any other federal body, are outside our investigative jurisdiction. The caller told us she had written to the federal Minister of Justice on the subject, and we agreed that this was an appropriate avenue for expressing her concerns.

Concerns about terminology used to describe Ombudsmen are not unknown to us. We frequently hear from people who maintain that the term "Ombudsman" should be replaced with "Ombudsperson" to erase any connotations of gender-specific language and set an example to government and the community. "Ombudsman" is a Swedish term meaning "citizen's advocate", and the "man", like the German "mann", does not refer to a sex but is analogous to the English "one" - i.e., one who speaks out for aggrieved citizens. While this explanation is convincing to some, it is by no means convincing to all.

Our office is fortunate that there seems little need to explain what an Ombudsman is to the citizens of British Columbia. People often have great difficulty pronouncing and spelling the word, but an understanding of its meaning is remarkably widespread in this province. The former suspicion of a term that sounded foreign and peculiar appears to have been replaced by a public fondness for the word that callers habitually stumble over as they launch into a complaint.

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Part III
Statistics

Complaint statistics included in the following tables refer to files closed in 1990 unless otherwise indicated.

Definitions of terms used to describe the disposition of complaints are provided in the introduction to Part II of this report on page 50.

TABLE 1

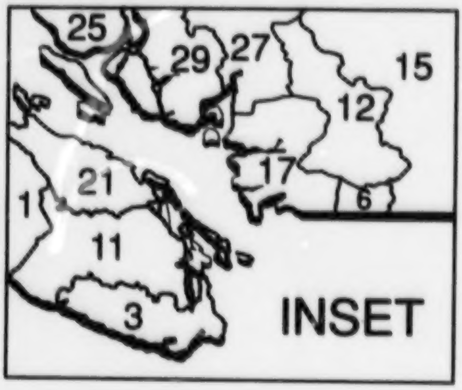
Profile of Complainants, Jurisdictional Matters

Originator	*Number*	*Percent*
Aggrieved Party	7,306	92.9
Relative/Friend	527	6.7
MLA/MP	5	.1
Other	24	.3
TOTAL	7,862	100

TABLE 2
Geographical Origin of Complaints

Regional District	*Percentage of population 1990 (estimated)*	*Percentage of complaints 1990*
1. Alberni-Clayoquot	1.0	0.6
2. Bulkley-Nechako	1.2	1.3
3. Capital	9.3	9.5
4. Cariboo	1.9	2.3
5. Central Coast	0.1	0.1
6. Central Fraser Valley	2.6	2.5
7. Central Kootenay	1.6	2.1
8. Central Okanagan	3.3	3.2
9. Columbia-Shuswap	1.3	1.7
10. Comox-Strathcona	2.5	2.5
11. Cowichan Valley	1.8	1.5
12. Dewdney-Alouette	2.8	6.1
13. East Kootenay	1.6	1.4
14. Fort Nelson-Liard	0.1	0.1
15. Fraser-Cheam	2.1	2.6
16. Fraser-Fort George	2.7	5.1
17. Greater Vancouver	47.2	35.5
18. Kitimat-Stikine	1.3	1.1
19. Kootenay Boundary	1.0	1.0
20. Mount Waddington	0.4	0.2
21. Nanaimo	2.9	2.7
22. North Okanagan	1.8	3.0
23. Okanagan-Similkameen	2.0	1.6
24. Peace River	1.6	2.1
25. Powell River	0.6	0.6
26. Skeena-Queen Charlotte	0.7	0.6
27. Squamish-Lillooet	0.7	0.6
28. Stikine *	0.1	0.1
29. Sunshine Coast	0.6	0.6
30. Thompson-Nicola	3.2	6.4
Out of province		0.8
Total	100.0	100.0

* Unorganized area under provincial administration



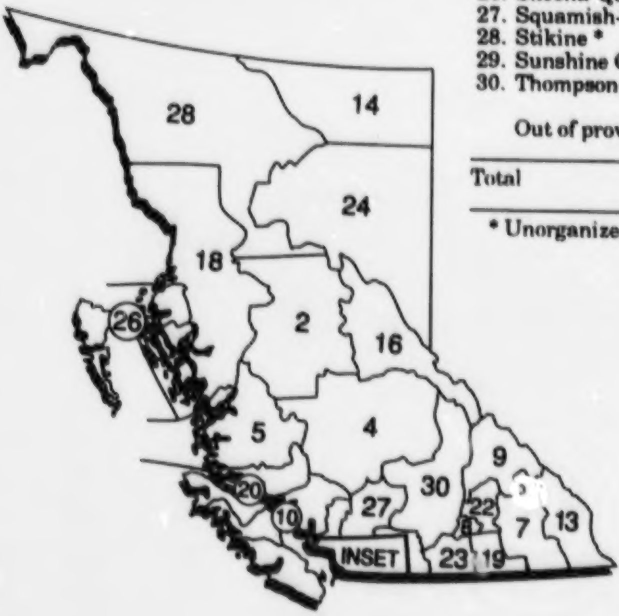


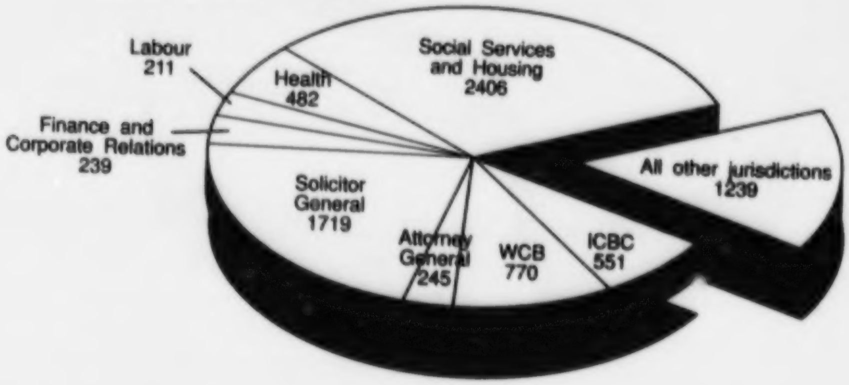
TABLE 3
Disposition of Jurisdictional Complaints

A. MINISTRIES	*Resolved*	*Not Resolved*	*Abandoned, Investigation Not Authrzd, Withdrawn*	*Not Substantiated*	*Declined Discont.*	*Inquiries*	*Total*
Premier's Office	1	0	1	0	2	0	4
Ministers of State	0	0	0	0	0	1	1
Advanced Education	23	1	12	10	13	19	78
Agriculture and Fisheries	4	0	1	6	4	1	16
Attorney General	84	0	33	32	61	35	245
Crown Lands	23	0	7	23	7	3	63
Education	6	0	3	3	9	20	41
Energy, Mines	7	0	3	4	2	0	16
Environment	22	0	14	35	19	11	101
Finance & Corporate Relations	125	0	15	45	20	34	239
Forests	26	0	25	22	15	6	94
Government Management Services	3	0	1	3	4	1	12
Health	165	0	32	91	128	66	482
International Business & Imm.	1	0	0	0	0	0	1
Labour & Consumer Services	38	1	34	43	67	28	211
Municipal Affairs, Rec. & Culture	5	0	8	17	10	5	45
Native Affairs	1	0	0	0	0	1	2
Parks	3	1	3	3	4	0	14
Regional Development	6	0	2	1	2	5	16
Social Services & Housing	533	0	146	301	1218	208	2406
Solicitor General	538	0	75	488	538	80	1719
Tourism & Provincial Secretary	3	0	1	4	1	0	9
Transportation & Highways	48	0	13	39	17	10	127
SUBTOTAL A	1665	3	429	1170	2141	534	5942
Percent	28.0	.1	7.2	19.7	36.0	9.0	100
B. OTHER AUTHORITIES							
Agricultural Land Commission	1	0	4	7	3	1	16
B.C. Assessment Authority	5	0	0	5	5	0	15
B.C.B.C.	2	0	2	1	1	0	6
B.C. Council of Human Rights	4	0	0	6	2	2	14
B.C. Ferry Corporation	1	0	4	5	2	1	13
B.C. Gaming Commission	1	0	2	0	0	1	4
B.C.H.M.C.	16	0	4	12	1	5	38
B.C. Hydro	25	0	9	22	65	4	125
B.C. Systems	0	0	1	0	0	0	1
B.C. Railway	2	0	0	1	0	0	3
B.C. Steamships	0	0	0	0	0	1	1
B.C. Transit	2	0	5	1	6	1	15
Colleges *	11	0	5	8	4	3	31
Environmental Appeal Board	1	0	1	0	0	0	2
Family Maintenance Enforcement	11	0	4	2	69	6	92
Hospital Boards *	4	0	1	6	4	3	18
I.C.B.C.	150	0	19	0	367	15	551
Industrial Relations Council	0	0	3	0	6	2	11
Superannuation Commission	10	0	1	15	5	5	36
W.C.B.	216	3	286	6	175	86	772
W.C.B. Review Board	5	0	29	0	15	5	54
Others	24	0	16	17	23	22	102
SUBTOTAL B	491	3	396	114	753	163	1920
Percent	25.6	.2	20.6	5.9	39.2	8.5	100
TOTALS A + B	2156	6	825	1284	2894	697	7862
Percent	27.4	.1	10.5	16.3	36.8	8.9	100

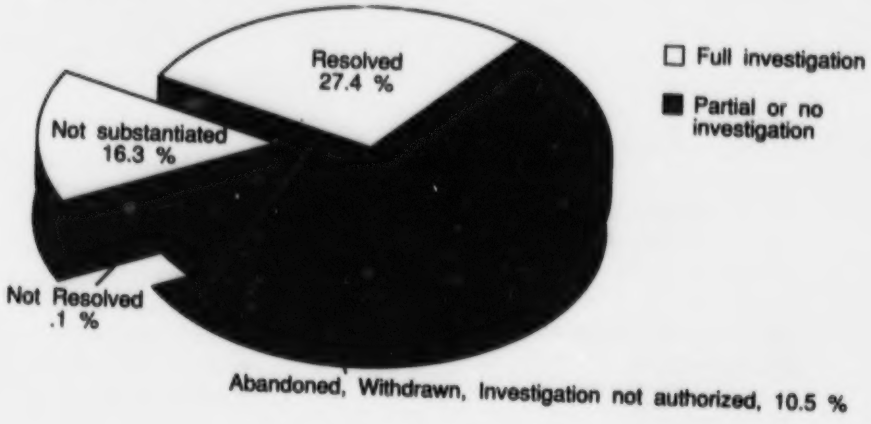
* Colleges and hospital boards that fulfil the criteria set out in section 2 of the Schedule to the Ombudsman Act.

Disposition of Jurisdictional Complaints, 1990
Total: 7,862 Complaints

1. Totals by authority



2. Manner of Disposition



3. Manner of Disposition, Full Investigations (3,446)

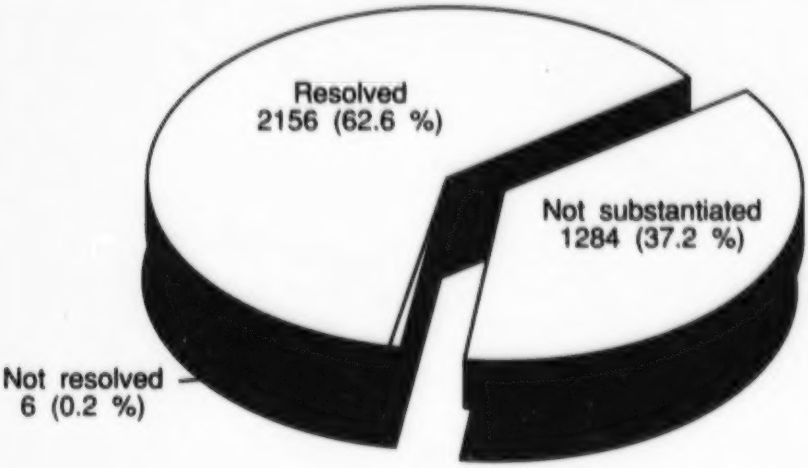


TABLE 4

Complaints against Unproclaimed Authorities (Sections 3-11, Schedule to Ombudsman Act)

Government corporations	0
Municipalities	183
Regional Districts	62
Public schools	75
Universities	2
Colleges and provincial institutes	4
Hospital boards	39
Professional/occupational associations	17
Islands Trust	10
TOTAL	392

TABLE 5

Non-Jurisdictional Complaints Received in 1990

Federal government	747
Other governments outside B.C.	68
Landlord/tenant issues	1,903
Other marketplace matters	1,309
Professional actions	118
Legal and court matters	622
Police matters	237
Statutory boards	1
Miscellaneous	1,192
TOTAL	6,197

TABLE 6

Reasons for Declining or Discontinuing Investigations

	Number	*Percent*
Investigation not authorized		
Inquiries	697	15.9
Abandoned by Complainant	297	6.7
Withdrawn by Complainant	240	5.4
Not an Authority	4	.1
Not a matter of Administration	77	1.7
Does not aggrieve a person	1	-
Appeal to Tribunal	281	6.4
Solicitor for an Authority	0	-
	1597	36.2
Investigation discretionary		
Over one year old	1	-
Insufficient personal interest	8	.2
Available remedy	1918	43.5
Frivolous/vexatious	1	-
Can consider without investigation	470	10.5
Not beneficial to complainant	327	7.4
Cost exceeds benefit	0	-
Evidence not available	94	2.1
Not resolved	6	0.1
	2825	63.8
TOTAL	4422	100%

TABLE 7

Level of Impact of Resolved Complaints

Individual only	1,887
Change in practice recommended	126
Change in procedure recommended	31
Change in regulation recommended	4
Total	2,048

TABLE 8

Ombudsman Reports on Investigations, 1981-90

Year	*Reports to Cabinet (Section 24)*	*Special Reports to the Legislature (Section 24(1))*	*Public Reports (Section 30(2))*
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
1987	2	0	5
1988	0	0	6
1989	0	0	5
1990	0	0	2
TOTALS	30	22	22

TABLE 9

Complaints/Inquiries Closed: Selected Authorities, 1982-1990

	1982	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Social Serv. & Housing	599	984	1,369	1,820	1,603	1,809	2,113	2,204	2,406
ICBC	791	810	499	424	405	515	552	610	551
Workers' Compensation*	440	482	641	737	773	929	917	806	824
Attorney General	419	428	988	831	997	1,345	1,394	167	245
Transportation/Hwys.	220	263	285	249	163	245	84	120	127
Health	163	209	301	569	451	280	475	368	482
B.C. Hydro	135	159	212	365	321	237	316	162	125

* Includes Workers' Compensation Review Board.

TABLE 10
Jurisdictional and Non-Jurisdictional Complaints, 1979-90

Year	*Total Complaints Closed*	*Number Outside Jurisdiction*	*Number Within Jurisdiction*	*Percent Within Jurisdiction*
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6
1987	12,406	6,127	6,279	50.6
1988	13,704	6,561	7,143	52.1
1989	12,815	5,497	7,318	57.1
1990	14,451	6,589	7,862	54.6

TABLE 11
Disposition of Jurisdictional Complaints by Number, 1979-90

	1979-80	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Not resolved	0	74	18	20	51	29	25	8	3	12	6
Resolved	565	781	1,304	1,556	2,053	2,267	1,833	2,231	2,324	2,319	2,156
Not substantiated	459	682	880	1,123	1,264	1,245	1,178	1,332	1,337	1,462	1,284
Discont/Declined	864	1,220	1,926	1,907	2,339	2,293	1,936	1,954	2,839	2,154	2,894
Abandoned./Wthdrn/ Investigation not authorized										832	825
Inquiries							467	754	640	539	697
TOTALS	1,888	2,757	4,128	4,606	5,707	5,834	5,439	6,279	·7,143	7,318	7,862

Disposition of Jurisdictional Complaints, 1979-90

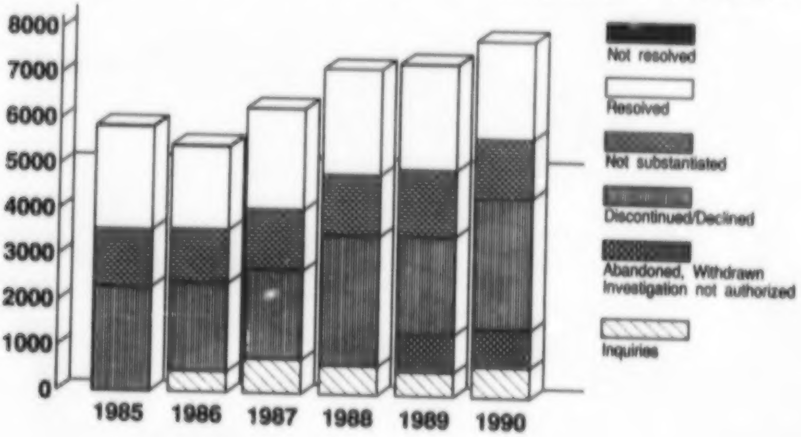


TABLE 12

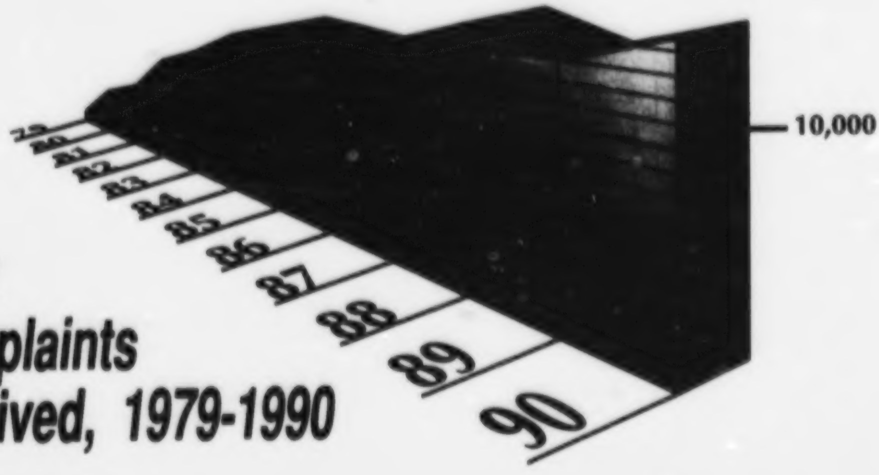
Disposition of Jurisdictional Complaints by Percentage, 1979-90

	79-80	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Not Resolved	0	3	1	1	1	1	.4	.1	.1	.2	.1
Resolved	30	29	31	34	36	39	33.6	35.6	32.5	31.7	27.4
Not Substantiated	24	25	21	24	22	21	22.0	21.2	18.7	20.0	16.3
Discontd/Declined	46	44	47	41	41	39	36.0	31.1	39.7	29.4	36.8
Ab./Wthdrn./ Investigation not authorized										11.4	10.5
Inquiries							8.0	12.0	9.0	7.3	8.9

TABLE 13

Complaints/Inquiries Received and Closed, 1979-90

Year	*Complaints Received*	*Percent Increase / Decrease Over Previous Year*	*Complaints Closed*	*Percent Increase / Decrease Over Previous Year*
1979	924		256	
1980	3,840		3,941	
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
1987	12,712	15.4	12,406	10.9
1988	14,184	8.9	13,704	9.0
1989	12,936	-8.8	12,815	-6.5
1990	14,580	12.7	14,451	12.7
Total	115,606		114,625	



New Complaints Received, 1979-1990

Staff as at December 31, 1990

Amren, R.W. Bergen
Anderson, Patricia (Pat)
Archibald, Susan
Berry, Susan P.
Beyer, L. Eleonore
Brown, Cleta*
Burrell, Elizabeth (Betty)
Carlson, Linda
Clarke, Gladys
Davis, David
Dennison, Sid
Diersch, Eileen*
Desilets, Hélène
Dixon, Lorrainne A.
Fisher, Barbara
Forth, Angela B.
Gardiner, Thomas (Scotty) M.
Greer, David
Hadley, Sonja E.
Hayward, Dorothy
Henders, Keith C.
Heyman, Susan L.
Illington, Joy
Jones, Eric
Kemeny, Carol
Kemsley, Tom
Kilshaw, Karen M.
Madison, Christine
Nadeau, Errol
Nicholls, Elizabeth
Owen, Stephen
Parfitt, D. Brent
Phillips, R. Delmar (Del)
Ross, Michael
Skeldon, Dorothy
Skinner, Michael T.
Smalley, Leora D.
Summersgill, William (Bill) M.
Tweddle, Rita
Williams, Holly E.

* On leave of absence

Ombudsman Act

OMBUDSMAN ACT

[Ss. 3 to 11 of Schedule not in force: see *s. 35]*

CHAPTER 306

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2)

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4)

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia.

(1.1) The Ombudsman holding office when this subsection comes into force shall, during the remainder of his current term of office, be paid the greater of

(a) the salary he is actually receiving on December 1, 1987, or

(b) the salary prescribed in subsection (1).

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6); 1987-60-20.

Pension

5. (1) Subject to this section, the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section
- (a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service.
- (b) [Repealed 1988-52-2.]

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act*.

1977-58-2(7 to 11); 1985-14-4; 1988-52-2.

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,
- (a) suspend the Ombudsman, with or without salary; or
- (b) remove the Ombudsman from his office.

(3) Where
- (a) the Ombudsman is suspended or removed;
- (b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or
- (c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until
- (d) the appointment of a new Ombudsman under section 2;
- (e) the end of the period of suspension of the Ombudsman;
- (f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or
- (g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where
- (a) the Ombudsman is suspended or removed; or
- (b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or
- (c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) The Ombudsman may, in accordance with the *Public Sevice Act*, appoint employees necessary to enable him to perform his duties.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) [Repealed 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).]

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;
(b) prosecute an offence under this Act; or
(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;
(b) an act done or omitted; or
(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;
(b) no appeal lies in respect of it; or
(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and
(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or
(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11.

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest, the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
  - (i) contrary to law;
  - (ii) unjust, oppressive or improperly discriminatory;
  - (iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
  - (iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;
  - (v) related to the application of arbitrary, unreasonable or unfair procedures; or
  - (vi) otherwise wrong;
- (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
  - (i) did so for an improper purpose;
  - (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or
  - (iii) was negligent or acted improperly; or
- (c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

- (a) a matter be referred to the appropriate authority for further consideration;
- (b) an act be remedied;
- (c) an omission or delay be rectified;
- (d) a decision or recommendation be cancelled or varied;
- (e) reasons be given;
- (f) a practice, procedure or course of conduct be altered;
- (g) an enactment or other rule of law be reconsidered; or
- (h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83); 1987-48-14.